83-366

No. 83-

In the Supreme Court of the United States

OCTOBER TERM, 1983

PENOBSCOT NATION,
APPELLANT,

v.

ARTHUR STILPHEN, COMMISSIONER,
DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF MAINE,
AND
JAMES E. TIERNEY, ATTORNEY GENERAL,
APPELLEES.

On Appeal from the Supreme Judicial Court Of Maine

JURISDICTIONAL STATEMENT

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I.

QUESTION PRESENTED

May the State of Maine prohibit the operation of a bingo game by an Indian tribal government on its own reservation, when the revenues from the operation are used solely to finance tribal government services and the State permits licensed bingo games and other forms of gaming off the reservation?

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Opinions Below

The opinion of the Maine Supreme Judicial Court is reported at 461 A.2d 478 and is reproduced as Appendix "A". The prior opinion in the case by the Maine Superior Court is unpublished and is reproduced as Appendix "B".

Jurisdiction of the Court

This is an appeal from the judgment in this case entered by the Supreme Judicial Court of Maine on June 7, 1983. The Notice of Appeal was filed in the Supreme Judicial Court of Maine on June 20, 1983 and is reproduced as Appendix "C". Jurisdiction of the appeal is conferred by 28 U.S.C. §1257(2). *E.g.*, *McClanahan* v. *State Tax Commission*, 411 U.S. 164, 167, 93 S.Ct. 1257, 1260 (1973); *Warren Trading Post Co.* v. *Arizona Tax Commission*, 380 U.S. 685, 686 (1965); *Metlakatla Indian Community* v. *Egan*, 369 U.S. 45, 50 (1962). *See also*, *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue*, __ U.S. __, 102 S.Ct. 3394 (1982); *Central Machinery Co.* v. *Arizona State Tax Commission*, 448 U.S. 160, 100 S.Ct. 2592 (1980).

Statutory Provisions

The principal statutory provisions involved in the case are the Maine Indian Claims Settlement Acts, Pub.L. 96-420, 94 Stat. 1785, 25 U.S.C.A. §§1721 *et seq.*, and Me. Pub.L. 1979, c. 732, §1, 30 M.R.S.A. §§6201 *et seq.*; and the Maine beano statute, 17 M.R.S.A. §§311 *et seq.* The full text of these statutes is set out as Appendix "D".

Statement of the Case

The Penobscot Nation is a federally recognized Indian tribe in Maine which finances its tribal government in substantial part through the operation of a beano (or "bingo") game. The game is conducted by the tribal government under a tribal ordinance on the Penobscot Nation Reservation, by tribal members who are employed by the tribal government. No outside operator or consultant is involved in the game. All of the net revenues of the game are applied to fund approximately 25% of the budget of the tribal government for police, sanitation, health, housing, and similar services on the reservation. The game is open to the general public and both members and non-members regularly play.

The game has been conducted since 1976 without any suggestion of misconduct, and it continued without interference from the State of Maine until late in 1982, when the State announced that it would prosecute participants in the games under the State beano law. The Penobscot Nation then filed suit in the Maine Superior Court to enjoin enforcement of the State law against the Penobscot beano.

A temporary restraining order was issued and continued during the pendency of the action below. The Maine Supreme Judicial Court subsequently ruled that federal law permitted enforcement of the State beano law against the tribe and dissolved the injunction. The Penobscot Nation applied for an injunction from this Court and on June 28, 1983, Justice Brennan enjoined enforcement of the State beano law against the Penobscot Nation until the disposition of this appeal.

The question presented on this appeal was first raised in the Complaint, which alleged that as a matter of State law, the Maine beano statute did not apply to municipal or tribal governments, and that as a matter of federal law, "internal tribal government including the generation of revenue is not subject to regulation by the State of Maine".

This federal issue was fully briefed and argued to the trial court, and to the Maine Supreme Judicial Court in the Penobscot Nation's principal brief on appeal:

> "Whether or not the State beano statute is construed to apply to the operation of beanos by municipalities, *it could not lawfully be applied to the Penobscot Nation's beano game because, as a principal financing mechanism of tribal government, it is an internal tribal matter exempt from State regulation* under the Maine Indian Claims Settlement Act.
>
> . . . Under the applicable principles of law, the competing concerns of tribal sovereignty and State regulation must be weighed. Since the tribal interest in maintaining the

beano as a source of governmental revenue is central to its ability to govern itself, and the State interest in regulating the beano is minimal, the State is barred from interfering in the tribal government's beano."

That is the position which the Penobscot Nation asks this Court to adopt on Appeal.

The Questions Presented Are Substantial

I. THE DECISION OF THE MAINE SUPREME JUDICIAL COURT IS IN DIRECT CONFLICT WITH THE DECISIONS OF THE COURTS OF APPEAL FOR THE FIFTH AND NINTH CIRCUITS WHICH UPHELD THE RIGHT OF INDIAN TRIBES TO FINANCE TRIBAL GOVERNMENT THROUGH TRIBAL BINGO OPERATIONS.

The decision below is in direct conflict with those of every federal court which has considered this issue. *Barona Group of Capitan Grande Band of Mission Indians* v. *Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, __ U.S. __, 103 S.Ct. 2091 (1983); *Seminole Tribe of Florida* v. *Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982); *Oneida Tribe of Indians* v. *State of Wisconsin*, 518 F.Supp. 712 (W.D. Wis. 1981). These decisions held that State regulation of tribal bingo operations was pre-empted by federal law despite Pub.L. 280, 67 Stat. 588, which conferred civil and criminal jurisdiction on the States concerned.

The court below distinguished those cases as "decided on the basis of specific federal statutes instead of federal Indian common law". 461 A.2d at 484. This distinction is baseless. Public Law 280 conferred no new authority on the tribes involved. Rather, it transferred some of their authority to the States. *Barona*, *Seminole* and *Oneida* hold that P.L. 280 preserved the right which the tribes previously had to finance their governments through bingo operations: P.L. 280 could not be the source of that right.

This case, like the other bingo cases, turns on the application of State law to a tribal bingo operation in the face of a federal statute conferring criminal and civil jurisdiction on the State. The Maine court's distinction between "specific federal statutes" which governed the federal cases and "federal Indian common law" which governed the decision below is wrong. The body of Indian case law is primarily concerned with the manner in which federal statutes affecting Indian tribes must be construed, not with the independent effect of a body of "common law".

The court below held, in direct conflict with the federal decisions, that a tribe has no authority to operate a bingo game to finance tribal government in the absence of federal legislation conferring the right. This conflict with the federal decisions can only be resolved by this Court.

II. The Holding Below That States Have Exclusive Jurisdiction Over Non-Indians on Reservations Unless Jurisdiction Is Conferred on Tribal Governments by Congress, Is In Direct Conflict With the Decisions of This Court.

The decision below holds that tribes have *no* governmental powers in matters affecting non-Indians except when granted such power by specific treaty or statutory provisions. This ruling is in direct conflict with the decisions of this Court. *Rice* v. *Rehner*, __ *U.S.* __, *103 S.Ct. 3291 (1983); New Mexico* v. *Mescalero Apache Tribe*, __ U.S. __, 103 S.Ct. 2378 (1983); *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue*, __ U.S. __, 102 S.Ct. 3394 (1982); *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 102 S.Ct. 894 (1982). Since this issue is at the heart of the persistent tension between State and tribal governments, the law must be clarified by this Court.

The court below held that tribal enterprises which are used to finance tribal government, such as bingo operations, cannot be protected by federal law when they involve non-Indians, unless the power is specifically granted by Congress. The court held that except as granted by Congress, the powers of tribal governments are limited to:

> Matters that may be classified "domestic" in the sense that they involve only intra-tribal relationships or regulation of Indian-owned land.

461 A.2d at 485. The court held that the recent decisions of this Court in the field of taxation constituted a narrow exception to this general rule:

> Recently, the [Supreme] Court has appeared to extend the scope of a tribe's inherent powers beyond these domestic matters, by holding that Indian tribes have some inherent power to tax.
>
> . . .
>
> [W]e believe that the power to tax, recognized in *Colville* and *Jicarilla*, is a narrow exception to the general rule limiting an Indian tribe's inherent authority to regulate "domestic" matters, and that the Penobscot Nation's beano game does not fall within that exception.

461 A.2d at 485, 487. Except for this narrow tax exception, the court held that tribal government authority was limited to tribal members unless Congress specifically conferred additional authority.

This view of the law flatly contradicts the rulings of this Court. A tribe's governmental authority over non-Indians on the reservation raises "more difficult questions" than "domestic" matters involving Indians alone, but this simply

requires a more "particularized inquiry into the nature of the State, federal, and tribal interests at stake." *New Mexico* v. *Mescalero Apache Tribe*, 103 S.Ct. at 2385-2386. *Accord*, *Rice* v. *Rehner*, 103 S.Ct. at 3295; *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue*, 102 S.Ct. at 3399. In making this inquiry, the State interest in regulating reservation activities has greater weight to the extent that "the State can point to off-reservation effects that necessitate State intervention". *Mescalero*, 103 S.Ct. at 2387. *Accord*, *Rice*, 103 S.Ct. at 3298. The tribal interest has greater weight to the extent that it goes to the heart of "Congress' overriding goal of encouraging 'tribal self-sufficiency and economic development'." *Mescalero*, 103 S.Ct. at 2387. *Accord*, *Ramah Navajo*, 102 S.Ct. at 3399.

The court below never reached this "particularized inquiry", since it concluded that without affirmative Congressional action, a tribal enterprise which involved non-Indians was automatically subject to State law.

Had the State court made the inquiry required by the decisions of this Court, it would have followed the federal bingo decisions. These games are used to finance essential governmental functions such as police, sanitation, and health services on the reservation. This interest resembles the power to raise revenue recognized as "an inherent power necessary to tribal self-government", *Merrion* v. *Jicarilla Apache Tribe*, 102 S.Ct. at 901-902, and the power to carry out a project which "generates funds for essential tribal services and provides employment for members who reside on the reservation". *Mescalero*, 103 S.Ct. at 2390. It is more fundamental than the mere desire for "freedom to regulate" reservation conduct weighed in *Rice* v. *Rehner*, 103 S.Ct. at 3296. The tribal claims advanced in *Rice* rested, at bottom, on a theoretical question about tribal autonomy. The tribal claims advanced in the bingo cases go to the fiscal survival of tribal government.

While this interest in financing tribal government would not justify every revenue-raising scheme, it must be carefully weighed against the actual State interests at stake in the off-reservation impact of the reservation activity. Thus, it was obvious in *Rice*, 103 S.Ct. at 3298, that:

> Liquor sold by Rehner to other Pala tribal members or to non-members can easily find its way out of the reservation and into the hands of those whom, for whatever reason, the State does not wish to possess alcoholic beverages...

As was equally obvious in the federal bingo decisions, however:

> The operation of bingo halls, on the other hand, must necessarily remain on the reservation.

Seminole Tribe of Florida v. *Butterworth*, 658 F.2d at 315.

Moreover, in Maine, like the States discussed in the federal bingo cases, beano games are regularly permitted as a way to finance non-profit organizations. Many of these States, like Maine, also rely on state lotteries, pari-mutuel betting and other gambling operations as important sources of governmental revenue.[1] The court below emphasized that public policy once viewed gambling as "an evil from which the people must be protected". 461 A.2d at 487. It is now, however, an established strategy of public finance in Maine and most other jurisdictions. The State interest in having a monopoly on this revenue source is not entitled to the same weight as a State policy condemning all gambling.

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[1] State lotteries sell $3.8 billion in tickets annually for 18 States (including Maine) and the District of Columbia. Thirty-two States (including Maine) derive income from authorized pari-mutuel betting. *Public Gaming Research Institute* (Rockville, Md. 1982).

Finally, the compelling factor in *Rice* was the statute and the settled policy authorizing State supervision of liquor sales on Indian reservations. *Id.*, 103 S.Ct. at 3297-3303. There is no similar law in this area and federal policy is quite the opposite. The Department of Interior has rejected proposals to delegate authority over Indian gaming operations to the States as inconsistent with the President's policy on tribal self-sufficiency. The Interior Department is instead developing federal regulations to protect tribal bingos against possible abuses.[2] There is no grant of State authority in this regard comparable to the clear delegation by Congress in *Rice*.

This reasoning does not preclude all State regulation of reservation bingos. A State which prohibits all bingos as a matter of public policy could apply that prohibition to its reservations. Tribes generally would have a lesser interest in regulating private bingo operations on the reservation. But the court below made no such particularized inquiry.

The failure of the court below to undertake the inquiry required by the decisions of this Court justifies review on the merits to resolve the conflict with the federal decisions upholding tribal bingos.

III. The Refusal of the Court Below To Consider the Federal Policies Protecting Tribal Sovereignty and Self-Sufficiency in Construing the Applicable Federal Statutes Is in Conflict With the Decisions of This Court.

The court below also departed from the rulings of this Court when it concluded that authority to regulate the governmental operations of the Penobscot Nation had been conferred by Congress on the State of Maine, in a statute conferring civil

[2] See, Letter of Deputy Assistant Secretary John Fritz, March 3, 1983, reproduced as Appendix "E". The Administration adopted Interior's position and omitted the proposed delegation of authority over Indian gaming to the States in the draft criminal code subsequently submitted to Congress.

and criminal jurisdiction on the State. Pub.L. 96-420, 25 U.S.C.A. §1725. In reaching that conclusion it not only ignored the construction of analogous jurisdictional statutes in the federal bingo decisions, it also ignored the guidelines provided by this Court for resolving such problems of statutory construction. The court failed to give any consideration to the federal policies protecting tribal self-government and self-sufficiency in construing these statutes.

This court has repeatedly instructed the State courts to consider those central principles when dealing with statutes affecting tribal self-government. In *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue*, 102 S.Ct. at 3403, this Court urged the State courts to enforce these principles of federal Indian law:

> We have consistently admonished that federal statutes and regulations relating to Tribes and tribal activities must be "construed generously in order to comport with . . . traditional notions of Indian sovereignty and with the federal policy of encouraging tribal independence." This guiding principle helps relieve the tension between emphasizing the pervasiveness of federal regulation and the federal policy of encouraging Indian self-determination. Although we must admit our disappointment that the courts below apparently gave short shrift to this principle and to our precedents in this area, we cannot and do not presume that State courts will not follow both the letter and the spirit of our decisions in the future.

The court below did not even give "short shrift" to these principles: in its entire discussion of the applicable statutes, it did not mention this guiding canon. 461 A.2d at 487-490. Since it believed that tribal sovereignty plays no role in matters affecting non-members, the court below apparently concluded

that these concepts of sovereignty were not relevant here. 461 A.2d at 484-487. In addition, the court believed that these principles were generally inapplicable to a tribe which had not been consistently dealt with by Congress. 461 A.2d at 484, 487. Similar reasoning was rejected by this Court in *United States* v. *John*, 437 U.S. 634, 652-653, 98 S.Ct. 2541, 2550-2551 (1978).

Moreover, while the court below cited testimony before a State legislative hearing which was never presented to Congress, it ignored the intention of Congress as expressed in the committee reports that are the best evidence of Congressional purpose. *Zuber* v. *Allen*, 396 U.S. 168, 186, 90 S.Ct. 314, 324 (1969). The Committee Reports describe the statute as:

> an innovative blend of customary State law respecting units of local government *coupled with a recognition of the independent source of tribal authority, that is, the inherent authority of a tribe to be self-governing.*

Sen. Rep. No. 96-957, 96th Cong., 2nd Sess., p. 29 (emphasis supplied). This is reflected in the statutory guarantee of "specific immunities from State regulation of internal tribal matters", *id.*, which are specifically defined as "including. . .tribal government". 30 M.R.S.A. §6206(1).

Without mentioning this legislative history or the canons protecting tribal self-government, the court below interpreted the jurisdictional grant to the State as a sweeping termination of the tribes' governmental authority. It held that this statute empowered the State to regulate the tribal government except in matters of "[the Indians'] unique cultural or historical interest." 461 A.2d at 490. The importance of revenue-raising for tribal government services is irrelevant in this analysis, since it is not "uniquely Indian" nor a "traditional Indian practice." *Id.*

The Settlement did give Maine new jurisdiction on the reservations over civil actions, law enforcement, hunting and fishing, and regulation of private conduct on the reservation, which is not protected as an "internal tribal matter". But it clearly precluded the State regulation of tribal government which the court below permitted.

This renewed State defiance of federal Indian law is particularly disturbing because the Maine Settlement provided a model for the voluntary settlement of Indian land, water and fishing rights claims. This is clearly the preferred means of addressing the competing interests in these disputes. But such resolutions will prove far more difficult in the future if State courts are allowed to construe such agreements without regard for the principles of federal Indian law. Where, as here, a State court has initially disposed of the important federal interests involved in a federal settlement of Indian claims, this Court should provide "a particularized and exacting scrutiny commensurate with the powerful federal interest" at stake. *Cf.*, *Arizona* v. *San Carlos Apache Tribe*, __ U.S. __, 103 S.Ct. 3201, 3216 (1983). The questions presented merit review by this Court.

Respectfully submitted,

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APPENDIX A

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 3239
Law Docket No. Ken-83-42

PENOBSCOT NATION

v.

ARTHUR STILPHEN and JAMES E. TIERNEY

Argued May 2, 1983
Decided June 7, 1983

Before McKUSICK, C.J., and GODFREY, NICHOLS, ROBERTS, CARTER, and WATHEN, JJ.

McKUSICK, C.J.

For approximately six years the Penobscot Nation has been operating weekly beano games, as defined by 17 M.R.S.A. 311(1) (1983), on the Penobscot Indian Reservation. The games are usually held on Sundays and are open to members of the general public at prices ranging up to $45 per person. An individual prize of as large as $25,000 has been awarded in a single "Super Bingo" game. The weekly games draw many hundreds of players to the Penobscot reservation from all over Maine and beyond. The games generate gross revenues of approximately $50,000 per month; the net profit is used to fund various tribal governmental services and programs, including snow and rubbish removal on the reservation, police and health services, and home improvement programs.

In October, 1982, defendants James Tierney and Arthur Stilphen, Maine's Attorney General and Public Safety Com-

missioner, respectively, advised the Penobscot Nation of their intent to move against the Nation, or its officers, employees and agents, for violating the state's beano law. The state has provided in chapter 13-A of title 17 M.R.S.A., §§ 311-325 (1983), for the licensing of beano games under certain circumstances. Section 312 states,

> No person, firm, association or corporation shall hold, conduct or operate the amusement commonly known as "Beano" or "Bingo" for the entertainment of the public within the State unless a license therefor is obtained from the Chief of the State Police.

The Penobscot Nation has no current beano license; indeed, it admits that its game is not eligible for a license under chapter 13-A, because section 314 and 315 permit the Chief of the State Police to issue licenses only to volunteer fire departments, agricultural fair associations, and certain nonprofit organizations, as well as to "bona fide resort hotels" whose games return no profits to the hotels. Moreover, the Nation's games do not comply with the provision of section 312 prohibiting Sunday beano games, or with various regulations, promulgated by the Chief of the State Police pursuant to section 317, prohibiting the charging of admission fees and limiting to $200 the value of any single prize and to $1,000 the aggregate value of prizes awarded during any one occasion. Under section 325, a fine of up to $1,000 may be assessed against any "person, firm, association or corporation" violating any of the provisions of chapter 13-A.[1]

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[1] Since by 17 M.R.S.A. § 325 only a fine may be imposed for an infraction of section 312, that offense is classified as a "civil violation." *See* 17-A M.R.S.A. § 4-A(4) (1983). The Maine Criminal Code, 17-A M.R.S.A. §§ 953, 954, also imposes criminal penalties upon any "person" who advances or profits from unlawful gambling, defined as gambling (which includes beano) that is "not expressly authorized by statute," For the present decision, we need not address the question whether the Penobscot Nation is a "person" for purposes of the criminal statute. See discussion at pp. 6-7 below.

The seriousness with which the criminal law views any gambling not ex-

In December, 1982, the Nation sought from the Superior Court (Kennebec County) both a declaration that its beano game was lawful and an injunction prohibiting defendants from enforcing against the tribe the provisions of Maine's beano law. The Nation argued that chapter 13-A of title 17 does not apply to it because it is neither a person, a firm, an association, nor a corporation. In support of this proposition, the tribe cited 30 M.R.S.A. § 6206(1) (Supp. 1982-1983), which states that the Penobscot Nation, "within [its] Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities ... and shall be subject to all the duties, obligations, liabilities and limitations of a municipality...." A municipality, the Nation pointed out, has been held not to be a "person" or a "corporation"—at least for purposes of a wrongful death statute, *Chase* v. *Inhabitants of Town of Litchfield*, 131 Me. 122, 125, 182 A. 921, 923 (1936); and it argued that one does not ordinarily think of a municipality as a "firm" or an "association." The Penobscot Nation further asserted that even if the beano law is, by its terms, applicable to it, the game is an "internal tribal matter," which, under another provision of 30 M.R.S.A. § 6206(1), is "not subject to regulation by the State." The Superior Court ruled against the Nation and denied its request for an injunction, holding that 17 M.R.S.A. ch. 13-A applies to the Penobscot Nation and that it is not shielded by 30 M.R.S.A. § 6206(1) from state enforcement of the beano law. We agree.

---

pressly authorized by statute is demonstrated by the severity of sentence to be imposed upon aggravated unlawful gambling (gambling not expressly authorized by statute from which the promoter gets more than $250 in any 24-hour period, 17-A M.R.S.A. § 953). That offense is classified as a Class B crime, punishable by imprisonment up to ten years and a fine for a natural person of up to $10,000 and for an organization of up to $20,000. 17-A M.R.S.A. §§ 1252(2)(B), 1301(1)(A), 1301(3)(B).

I. The Applicability of the Beano Law

Chapter 13-A of title 17, prohibiting any "person, firm, association or corporation" from operating beano games without a license, cannot be fully understood unless its history is examined. In 1943, the legisiature passed P.L. 1943, ch. 355, "An Act Providing for the Licensing and Regulation of the Amusement Known as Beano." Sections 1 and 7 of the 1943 act contained the precise "person, firm, association or corporation" language that now appears at 17 M.R.S.A. §§ 312 and 325. The original bill, L.D. 834 (91st Legis. 1943), did not specify who or what could obtain a beano license; before it was passed, therefore, it was amended so as to limit licenses to fair associations and various nonprofit organizations. Speaking in favor of an early version of this amendment, Senator Brown of Aroostook said its effect would be to keep racketeers out of Maine because "no one but the bona fide organizations mentioned here can run a game of Beano in the state of Maine." Legis. Rec. 1078 (1943). The next day, on the Senate floor, a later version of the amendment was debated. Senator Varney of York asked,

> Is it intended by this amendment that nobody can have a license to play Beano except those organizations already mentioned?

Senator Friend of Somerset, a proponent of the amendment, replied. "Yes," Legis. Rec. 1153 (1943).

The history of the current beano licensing law thus demonstrates that the legislature intended that law to prohibit entirely the operation of beano games except by those entities issued valid licenses by the Chief of the State Police. The terms "person," "firm," "association," and "corporation" were used to reach every entity capable of operating a beano game. The fundamental objective in interpreting any statute is to determine the intent of the legislature in enacting it and to give

effect to that intent. *Cummings* v. *Town of Oakland*, 430 A.2d 825, 829 (Me. 1981), *cert. denied*, 454 U.S. 1134 (1982). That the legislature intended to permit beano games only where licensed was recognized correctly just one year after the beano law was first enacted; the State's Attorney General then wrote, "Whenever and wherever the amusement commonly known as Beano is conducted or operated 'for the entertainment of the public' a license must be obtained." Op. Me. Att'y Gen. (1944), *reprinted in* 1943-44 Me. Att'y Gen. Ann. Rep. 160.

Our interpretation of the language at issue in this case is reinforced by the fact that the general gambling laws in effect when the beano law was first adopted categorically prohibited all gambling, no matter by whom conducted. R.S. ch. 136. § 18 (1930), stated, "Every ... scheme or device of chance, of whatever name or description ... is prohibited," and set penalties for "whoever is concerned therein." R.S. ch. 136, § 1 (1930), levied a fine on "[w]hoever keeps or assists in keeping a gambling house," while section 2 of the same chapter provided for a fine of up to twenty dollars for "[w]hoever gambles, or bets on any person gambling." In short, the state of Maine in 1943 already prohibited gambling as a general matter; the legislature in that year acted to create a limited exception for certain specific entities eligible for beano licenses. If P.L. 1943, ch. 355, the direct precursor of current 17 M.R.S.A. ch. 13-A, were read to allow some entity to conduct beano games without a license from the Chief of the State police, it would directly conflict with the laws prohibiting gambling by all entities capable of engaging in gambling or "games of chance." We will not read a statute to conflict with another statute where an alternative, reasonable interpretation yields harmony. *See State* v. *Rand*, 430 A.2d 808, 817 (Me. 1981).

The scope of the beano law, its language having survived substantially intact since 1943, is the same today as it was when the law was enacted. 17 M.R.S.A. § 312, standing

alone, therefore prohibits anyone and anything from operating a beano game—as "beano" is defined in section 311(1)—without a license from the Chief of the State Police. Moreover, the state's criminal gambling laws, now codified at 17-A M.R.S.A. ch. 39, §§ 951-958 (1983), declare today, just as they did in 1943, that all beano games conducted without a license are illegal. Section 952(4) defines "gambling" so as to include beano, and, by section 952(11), any gambling "not expressly authorized by statute" is defined as "unlawful." The only statute that could "authorize" a beano game is 17 M.R.S.A. ch. 13-A; in fact, section 951 of the criminal code expressly exempts from the application of the rest of chapter 39 any person licensed by the Chief of the State Police under 17 M.R.S.A. ch. 13-A. This explicit reference to the beano law indicates that the legislature in 1975 still considered it only a limited exception to the general no-gambling rule. *See* 17-A M.R.S.A. § 951 comment.

The definitions contained in section 952, together with the specific allusion to the beano licensing law contained in section 951, make it clear that in Maine all gambling, including beano, is still unlawful unless expressly permitted by state statute. The Penobscot Nation cannot obtain permission to conduct its beano games under 17 M.R.S.A. ch. 13-A or any other existing state statute. Therefore, even if it were to be considered a "municipality" for purposes of the beano law, it is prohibited by section 312 of title 17 from operating those games.

II. The Scope of the Nation's Exemption from State Law

Relations between the Penobscot Nation, the State of Maine, and the federal government are now controlled by the federal Maine Indian Claims Settlement Act of 1980, Pub.L. No. 96-420, 94 Stat. § 1785, now codified at 25 U.S.C. §§ 1721-1735 (Supp. IV 1980) ("the federal act") and by Maine's Act to Implement the Maine Indian Claims Settlement, P.L.

1979, ch. 732, § 1, now codified at 30 M.R.S.A. §§ 6201-6214 (Supp. 1982-83) ("the state act"). The Nation argues that by dint of 30 M.R.S.A. § 6206(1), which gives the tribe authority over "internal tribal matters" free from state regulation, it retains all of the inherent powers that, according to federal law, are recognized as an attribute of an Indian tribe's historical quasi-sovereignty. These powers, the Nation goes on to assert, include the right to raise money for tribal government and services by operating beano games on the Penobscot Indian Reservation, even though the games would otherwise be barred by state law. We cannot accept either of these two propositions. We conclude, first, that the Nation's inherent sovereign powers would in any event not include the right to run a beano game in violation of state law, and, second, that the federal and state acts have independently defined the sphere within which the tribe can operate free of state regulation, and that beano cannot be considered an "internal tribal matter" within that narrow sphere.

A. *Inherent Sovereignty*

The concept that Indian tribes retain certain "original natural rights," defeasible only by the federal government and not by the several states, was first articulated by Chief Justice Marshall in *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832). Using language both more sweeping and more eloquent than that found in any later judicial pronouncement, the Chief Justice held that Georgia could not convict a missionary, licensed by the federal government to preach to the Cherokee Nation, of violating a state law forbidding all white men from entering the Cherokee reservation without a permit from the governor of Georgia. "The Cherokee Nation," he wrote, "is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force ... but ... in conformity with treaties, and with acts of Congress." 31 U.S. at 561.

The Supreme Court in time revised its view of the scope of an Indian nation's inherent powers. In *United States* v. *Kagama*, 118 U.S. 375, 381-82 (1886), the Court stated that Indians are regarded, in the eyes of the law, as "a separate people, with the power of regulating their *internal and social relations*, and *thus far* not brought under the laws of the Union or of the State within whose limits they resided." (Emphasis added) In *Williams* v. *Lee*, 358 U.S. 217 (1959), the Court recognized that a tribe's inherent sovereignty did not render all activities conducted on a reservation immune from state regulation or action. "Essentially, absent governing acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." 358 U.S. at 220. *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 148 (1973), summarized the precedents neatly, saying that the "upshot" of federal Indian law is that "even on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law." The case immediately following *Mescalero* in the United States reporter, *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164 (1973), spoke specifically to the problem of state regulation of activities performed on an Indian reservation but involving non-Indians. *Williams*, said the Court, did not mean that Indians have an absolute right "to make their own laws and live by them"; rather, it provided that "the state could protect its interest up to the point where tribal self-government would be affected." 411 U.S. at 179.

Recent cases have confirmed *McClanahan's* suggestion that an Indian tribe's inherent powers cannot be judged in a vacuum, but must be weighed against the interests of the state in applying its laws and regulations to the tribe.

> Long ago this Court departed from Mr. Chief Justice Marshall's view that "the laws of [a state] can have no force" within reservation boundaries .... There is no

> rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members.

White Mountain Apache Tribe v. *Bracker*, 448 U.S. 136, 141-42 (1980). In holding that the state of Arizona could not impose a motor carrier tax or a fuel-use tax on a logging company owned by non-Indians but doing business exclusively with a tribally owned sawmill on an Indian reservation, *White Mountain* noted that the taxes would be used to construct and maintain state roads, but that the logging company in question did not use state roads, as its operations were confined to reservation land. Therefore, said the Court, Arizona had no "compensatory purpose" or "legitimate regulatory interest" in taxing the logging company other than the desire to raise revenue. 448 U.S. at 150.[2] *Montana* v. *United States*, 450 U.S. 544 (1981), agreed that the State of Montana, and not the Crow Indians, had the right to license and regulate hunting and fishing by non-Indians on land inside the tribe's reservation to which the state had title. The Court stated that the Crows' inherent sovereignty included

> the power to punish tribal offenders, ... inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. ... But exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.

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[2] The holding of *White Mountain* was based upon the Court's conclusion that the federal government had preempted the field of timber regulation on the Apache reservation so as to "preclude the additional burden" of state taxes, 448 U.S. at 150, and did not depend on any determination that the tribe's "inherent" or "sovereign" powers prohibited the state taxation. See note 4 below for a fuller discussion of this distinction.

450 U.S. at 564. Regulation of non-Indian hunting and fishing on reservation land owned by non-Indians "bears no close relationship to tribal self-government or internal relations," said the Court; therefore, "the general principles of retained inherent sovereignty did not authorize the Crow Tribe to adopt Resolution No. 74-05." 450 U.S. at 564-65.

Shifting our focus from the Court's attempts to articulate the content of an Indian tribe's retained sovereignty to its analysis of specific matters claimed to fall within a tribe's sphere of authority, we are unable to find a case on all fours with the controversy we are asked to resolve today. Although several lower federal court cases have allowed tribes to conduct beano or bingo games on their reservations in spite of state or local laws that appear facially similar to 17 M.R.S.A. ch. 13-A,[3] those cases were decided on the basis of specific federal statutes instead of federal Indian common law.[4] The Supreme Court has given us relatively few decisions clearly bottomed on the concept of inherent tribal authority rather than analyses of specific treaties or federal statutes. In fact, some commentators believe that "the preemption analysis has been the only sound and consistent basis for decision," and that even in *Worcester* v. *Georgia* the Indians' right of self-government existed only "because it had been recognized and allowed to continue in the relevant treaty." Mettler, *A Unified Theory of Indian Tribal Sovereignty*, 30 Hastings L.J. 89,

[3] *See, e.g., Barona Group of Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3811 (1983); *Oneida Tribe of Indians* v. *State of Wisconsin*, 518 F. Supp. 712 (W.D.Wis. 1981); *Seminole Tribe of Florida* v. *Butterworth*, 491 F. Supp. 1015 (S.D. Fla. 1980), *aff'd*, 658 F.2d 312 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982).

[4] In *White Mountain*, 448 U.S. at 142-43, the Court explained that there are two doctrines that may render state law inapplicable to reservation Indians. The state may not act if the field it wishes to regulate has been "preempted," as to an Indian tribe, by federal treaties, statutes, or regulations, *or* if the state action would infringe upon the Indians' inherent rights of limited self-government. "The two barriers are independent." *See also*

112-13 (1978). Under this view, the federal precedents are of little help to a court faced with a claim of inherent sovereignty by a tribe that has had little or no historical relationship with the federal government. *Id.* at 120-21.[5]

In a handful of Supreme Court opinions, however, the Court has explained its decisions in terms of the inherent sovereignty doctrine alone. From those cases, a few points are clear. A tribe has the inherent power to try members of that tribe for crimes committed against fellow members on the reservation, *United States* v. *Wheeler*, 435 U.S. 313 (1978); *Ex Parte Crow Dog*, 109 U.S. 556 (1883), but not to try nonmembers for the same acts, *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). Tribal sovereignty permits the regulation of hunting and fishing by non-Indians on land owned by (or held in trust for) the tribe, but not the regulation of hunting and fishing on land owned by others, even if the land lies within the borders of a reservation. *Montana*, 450 U.S. 544. These cases involve matters that may be classified "domestic" in the sense that they involve only intra-tribal relationships or regulation of Indian-owned land. *See also* Goldberg, *A Dynamic View of Tribal Jurisdiction to Tax Non-Indians*, 40 Law & Contemp. Probs. 166, 169 (1976) ("Early decisions of the United States Supreme Court proclaimed that

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McClanahan, 411 U.S. at 172 ("the trend has been away from the idea of inherent sovereignty as a bar to state jurisdiction and towards reliance on federal pre-emption"); Note, *Indian Law—State Jurisdiction on Indian Reservations*, 3 W. New Eng. L. Rev. 715, 719-23 (1981). Thus, in *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976), *Warren Trading Post Co.* v. *Arizona Tax Commission*, 380 U.S. 685 (1965), *White Mountain*, and *McClanahan*, state taxes were held inapplicable to various reservation Indians or activities because they were preempted by, or were inconsistent with, federal laws governing Indian economic activity.

[5] *See* 25 U.S.C. § 1721(a)(9) (finding of Congress that from 1820, until the passage of the federal act it was the State of Maine rather than the United States that provided services to, asserted jurisdiction over, and assumed responsibility for the Penobscot Nation).

Indians possessed all sovereign powers over domestic matters within their territorial boundaries"). Recently, the Court has appeared to extend the scope of a tribe's inherent powers beyond these domestic matters, by holding that Indian tribes have some inherent power to tax.

Washington v. *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980), involved the state's attempt to impose its general cigarette excise tax and sales tax to cigarette sales made by reservation Indians, on the reservation, to non-Indians. The tribes themselves had adopted an ordinance imposing their own tax on reservation cigarette sales. The Court upheld both taxes, agreeing with the Indians that "the power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty," 447 U.S. at 152, but rejecting the Indians' contention that the state taxes are "inconsistent with the principle of tribal self-government" and therefore invalid as applied on the reservation. *Id.* at 154. The Court held that

> Washington does not infringe the rights of reservation Indians to "make their own laws and be ruled by them" ... merely because the result of imposing taxes will be to deprive the Tribes of revenues which they currently are receiving. The principle of tribal self-government, grounded in notions of inherent sovereignty and in congressional policies, seeks an accommodation between the interests of the tribes and the Federal Government, on the one hand, and those of the State, on the other. ... While the Tribes do have an interest in raising revenues for essential government programs, that interest is strongest when revenues are derived from value generated on the reservation by activities involving the Tribes and when the taxpayer is the recipient of tribal services.

Id. at 156-57. Moreover, said the Court, the state taxes did not conflict with or undermine any policy behind the tribal taxes,

which had no "nonrevenue purposes"; the state taxes therefore did not "contravene the principle of tribal self-government." *Id.* at 158.

Most recently, in *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982), a tribe's tax on oil and gas produced on the reservation was upheld:

> The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenues for its essential services.... [I]t derives from the tribe's general authority, as a sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing government services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction.

None of these precedents directly controls the case at bar. No case has squarely addressed the question whether an Indian tribe may operate and profit from a commercial enterprise prohibited by generally applicable state law. *Jicarilla* and *Colville*, however, provide us with a good base from which to reason. Taxation of non-Indians who do business on the reservation, though it goes beyond the direct regulation of relations among Indians or management of tribal resources, is included within a tribe's inherent powers primarily because it is considered "necessary" to finance the tribe's governmental activities and services. The Penobscot Nation, naturally, argues that its beano game functions to fulfill the same goal—to finance essential tribal services and programs. However, the Nation's case is weaker than that of the Indians in the tax cases, for at least three reasons. First, the Penobscots' beano revenues are not "derived from value generated on the reservation by activities involving the Tribe [where] the taxpayer is the recipient of tribal services." *Colville*, 447 U.S. at 156-57. The Colville Indians were in a weaker position than

the Jicarilla Apaches, in the eyes of the Court, because "the value marketed by the [Colvilles'] smokeshops to persons coming from outside is not generated on the reservation by activities in which the Tribes have a significant interest," 447 U.S. at 155, whereas the taxpayers in *Jicarilla* both benefited from tribal services and depleted the natural resources of tribal land. Non-Indian beano players benefit from none of the services that the Penobscots' beano revenues support. Nor do they, when buying beano tickets, "purchase" any Indian resource—such as the right to exploit tribal lands for mineral wealth.

The second difference between the present case and the tax cases is related to this economic value discussion. While a tax regulates or adds to the cost of some independent or underlying economic activity, a beano game is its own *raison d'etre*. Revenue-raising through beano is thus very different from revenue-raising through taxation. Beano is a commercial operation, related to tribal self-government only because of the use to which its profits are put. It shares with taxation none of the regulatory or user charge theories that have historically made taxation an intrinsically governmental function. If the Penobscots' beano game is within their "sovereign" powers, then Indian tribes must have the inherent authority to enter into all spheres of activity from which a profit could be made: everything from selling dry goods to selling drugs could become an aspect of tribal self-government by the tribe's committing the revenues raised to defraying the expense of the legitimate governmental function of the tribe.

The prospect, even though unlikely, of Indian tribes' claiming the inherent authority to engage in profitable but unlawful activities brings us to the third difference between our case and the tax cases. In *Colville* and *Jicarilla*, state laws did not forbid the tribes' actions. Maine, however, both punishes gambling criminally and forbids the operation of beano games for profit. The Supreme Court has acknowledged that the

interests of the state must be a part of the calculus where an Indian tribe's "inherent" rights are under consideration. *Colville*, 447 U.S. at 156. Maine has a legitimate governmental interest—having nothing to do with its own financial needs—in preventing the Penobscot Nation's beano games. The tribe's interest in beano, by contrast, is purely financial. And in point of fact, the Penobscots would have nothing to "sell" if highstakes beano were not prohibited throughout the rest of Maine. The *Colville* Court allowed the State of Washington to apply its sales and cigaratte taxes to on-reservation transactions because the Indian tribes had no inherent right "to market an exemption from state taxation." 447 U.S. at 155. The Penobscot Nation, in our view, has even less right "to market an exemption" from state gambling laws. *See* Note, *In Defense of Tribal Sovereign Immunity*, 95 Harv. L. Rev. 1058, 1068 (1982) ("the Court may be willing to limit the immunity given to tribes when they act commercially").

The Nation argues that the state's beano law is merely regulatory—designed to prevent crooked games—rather than prohibitory, and that, since there has been no suggestion that the Penobscots' game is dishonest, the state has no interest in preventing it from continuing. History, however, shows that the Nation's premise is fallacious. Even though gambling may be currently looked upon with growing tolerance, such activity was unlawful under the common law of Maine long before the legislature enacted its anti-gambling statutes, *see Lewis* v. *Littlefield*, 15 Me. (3 Shep.) 233, 237 (1829) ("All wagers in this State [are] unlawful"); and both the common law and statutory prohibitions have grown out of a widely held belief that gambling is an evil from which the people must be protected. *See Phalen* v. *Virginia*, 49 U.S. (8 How.) 163, 168 (1850), *quoted in Maine State Raceways* v. *LaFleur*, 147 Me. 367, 372, 87 A.2d 674, 677 (1952) (a lottery "infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it

plunders the ignorant and simple"). Even if we accepted the Nation's premise that Maine wishes only to "regulate gambling and not to prohibit it," we would reject its conclusion. A motorist may not run a red light simply because no one else is entering the controlled intersection. Just so, an organization running a beano game may not thwart the state's licensing law just because that organization is not shown to have inflicted upon the public an evil that the law seeks generally to prevent.

For these reasons, we believe that the power to tax, recognized in *Colville* and *Jicarilla*, is a narrow exception to the general rule limiting an Indian tribe's inherent authority to regulate "domestic" matters, and that the Penobscot Nation's beano game does not fall within that exception. Under federal Indian common law, therefore, we would hold that the State of Maine may enforce 17 M.R.S.A. ch. 13-A against the Penobscot Nation.

B. *Statutory Interpretation*

Ever since *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) at 559, it has been recognized that the powers and authority of an Indian tribe or nation may be either expanded or limited by an act of Congress. *See also Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58 (1978) (tribal sovereignty is "subject to the superior and plenary control of Congress"); *Wheeler*, 435 U.S. at 323 (tribal sovereignty "exists only at the sufferance of Congress and is subject to complete defeasance"). In the case at bar, the federal government took no steps to alter or affect the status of the Penobscot Nation from the founding of the Republic until 1980. In fact, because of the dearth of federal contact with Maine Indians and their long and intricate historical relationship with the State of Maine, it was long doubted whether they constituted "bona fide tribes" under federal Indian law. *See Bottomly* v. *Passamaquoddy Tribe*, 599 F.2d 1061, 1063-65 (1st Cir. 1979); *Joint Tribal Council of the Passamquoddy Tribe* v. *Morton*, 388 F. Supp. 649 (D. Me.), *aff'd*,

528 F.2d 370 (1st Cir. 1975); *State* v. *Dana*, 404 A.2d 551 (Me. 1979), *cert. denied*, 444 U.S. 1098 (1980). In 1980, Congress acted to settle far-reaching claims of various Maine Indians, including the Penobscots, to substantial money damages and to land comprising approximately two thirds of the state's territory. The federal settlement act, 25 U.S.C. §§ 1721-1735 (Supp. IV 1980), was predicated upon state legislation addressing the same topic, 30 M.R.S.A. §§ 6201-6214 (Supp. 1982-a3), which Congress expressly "approved, ratified, and confirmed." 25 U.S.C. §§ 1721(b)(3), 1725(b)(1). In addition to settling the land dispute,[6] these two acts quite precisely laid out the relationship thenceforth to obtain between the Penobscot Nation and the State of Maine. It is to these two statutes, therefore, that we turn to determine whether the Nation is now permitted to run an otherwise unlawful beano game on its reservation.

Section 1725(b)(1) of the federal act states that the Penobscot Nation, its members, and all lands and natural resources owned or held in trust for the Nation or its members, "shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act." By the same token, section 1725(f) authorizes the Nation "to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act." We are thus referred to the state act for an answer to the beano question. Two sections of the state act bear upon our inquiry. 30 M.R.S.A. § 6204 states:

> Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the

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[6] In the settlement, the Penobscot Nation became the beneficiary of two federal trust funds: (1) the Penobscot Land Acquisition Fund ($26,800,000) for buying land for the Nation; and (2) the Penobscots' Maine Indian Claims Settlement Fund ($13,500,000), from which the income is paid quarterly to the Nation. *See* 25 U.S.C. 1724(a)-(d).

> State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

More specifically, section 6206(1) confers upon the Nation the status of a Maine municipality, with an exception for "internal tribal matters":

> Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, *provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State.*

(Emphasis added)

Put as narrowly as possible, then, the issue here boils down to whether the Penobscot Nation's beano game is an "internal tribal matter." In answering this question in the negative, we first dispose of the contention that any matter over which an Indian tribe would have inherent authority under federal common law is an "internal tribal matter" under section 6206(1).

For one thing, section 1725(h) of the federal act makes "the laws and regulations of the United States which are generally applicable to Indians" inapplicable to the Nation insofar as

any of such federal laws or regulations "affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine." We read the term "laws" to include case law. *Cf.* 25 U.S.C. § 1722(d) ("laws of the State" includes Maine common law). It would make no sense, in an integrated legislative package, to define the state's jurisdiction with reference to federal case law, while at the same time declaring that the self-same case law has no impact upon the jurisdiction of the state of Maine.

For another thing, the legislative history of both acts makes it clear that they were intended to *change* the relationship between tribal and state authority from what it had been up until 1980. Counsel for the Nation said as much in public hearings before a state legislative committee:

> In the end what we wound up with was a blueprint for a governmental relationship between Indians and non-Indians alike—unlike that which exists anywhere else in the United States.[7]

Transcript of March 28, 1980 Public Hearing before the Joint Select Committee on Indian Land Claims, 25 (1980). While there was some disagreement as to whether the acts would limit or expand tribal powers, *compare* H. Rep. No. 96-1353,

[7] The Penobscot Nation's counsel acknowledged that the expansion of the State's jurisdiction over the Maine Indian tribes from what he conceived it previously to be was part of the *quid pro quo* for the State's going along with the settlement, which was necessary for the Nation to get the monetary benefits provided it by the settlement. He said:

> In light of all this, one might ask why the Indians were willing to even discuss the question of jurisdiction with the State but simply the answer is that they were obliged to do so if they wanted to effectuate the Settlement of the monetary and land aspects of the claim. ... [T]he Tribes opened negotiation with the State concerning the question of jurisdiction not because they wanted to do so but because they were obliged to do so to obtain a settlement that they had already negotiated with the federal government.

Transcript of March 28, 1980 Public Hearing before the Joint Select Committee on Indian Land Claims, 23-24 (1980).

96th Cong., 2d Sess. 15 (1980) ("the settlement strengthens the sovereignty of the Maine tribes"), *with* Legis. Rec. 721 (1980) (statement of Sen. Conley: "If this legislation passes, it becomes unique in ... that this will be the only State in the Union that does not have a nation within a nation, that all Indians are subjected to Maine law"), this disagreement stemmed primarily from the fact that the various legislators held differing views as to the extent of the tribes' powers before the settlement. It was generally agreed that the acts set up a relationship between the tribes, the state, and the federal government different from the relationship of Indians in other states to the state and federal governments.

Finally, we note that the phrase "internal tribal matters" is not a legal term of art. One would be rash to equate this phrase with such terms as "internal and social relations," *United States* v. *Kagama*, 118 U.S. at 381, "internal affairs," *Williams* v. *Lee*, 358 U.S. at 221, or "tribal self-government," *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. at 179, merely because of a partial language overlap.

We, therefore, look not to federal common law to define "internal tribal matters," but to the statute itself and to its legislative history. The state act follows the term "internal tribal matters" with a list of those matters included in the term: "membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income." 30 M.R.S.A. § 6206(1). Although this list is not exclusive, it cannot be denied that all of the items in it are fundamentally unlike the operation of an otherwise unlawful beano game. By the very nature of the matters listed, action by the Nation *directly* affecting them would not tend to bring the Nation into conflict with state laws of general application. By the familiar *ejusdem generis* rule, a general term followed by a list of illustrations is ordinarily assumed to embrace only concepts similar to those

illustrations. *Brunswick School Board* v. *Califano*, 449 F. Supp. 866, 870 (D.Me. 1978), *aff'd sub nom.*, *Isleboro School Committee* v. *Califano*, 593 F.2d 424 (1st Cir.), *cert. denied*, 444 U.S. 972 (1979). *See also Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 588 (1980). We construe section 6206(1) in accordance with this principle and find that beano is not embraced within the general term. The Nation argues that its beano games are related to "tribal government" because their proceeds help finance that government and its activities. We must reject this argument. As the Superior Court wrote, the exception so interpreted "would virtually nullify state jurisdiction," although section 6204 makes state jurisdiction the rule for the Penobscot Nation. If beano is an "internal tribal matter" and exempt from state regulation because of the uses to which its income is put, the same logic would make a myriad of other forbidden and even criminal practices legal so long as they turned a profit for the Nation. This result would violate the overall spirit of the settlement acts as well as common sense.

We note also that section 6206(1) of the Maine act explicitly authorizes the Nation to collect taxes. This grant would be unnecessary if, as the Nation argues, governmental financing mechanisms automatically fall within the Nation's scope of authority under the "internal tribal affairs" rubric.

Finally, the acts' legislative history supports our *ejusdem generis* construction of the term "internal tribal matters" —that is, our conclusion that the term embraces only those matters illustratively listed in the statute and other matters like them.

At the time the settlement acts were under consideration, the Attorney General of the State of Maine understood the "internal tribal affairs" exception to have been drafted "in recognition of [the Indians'] unique cultural or historical interest." S. Rep. No. 96-957, 96th Cong., 2d Sess. 50 (1980). The House Report stated that the settlement acts would pro-

tect the Indians against "acculturation" "by providing for tribal governments ... which control all such internal matters." H. Rep. No. 96-1353, 96th Cong., 2d Sess. 17 (1980). Counsel to the Penobscot Nation told a Maine legislative committee that he understood the settlement acts to accommodate "the Tribe's legitimate interest in managing their internal affairs, in exercising tribal powers in certain areas of particular cultural importance ...." Transcript of March 28, 1980 Public Hearing before the Joint Select Committee on Indian Land Claims, 25 (1980). And the committee itself reported that the exception to full state jurisdiction over Indians was provided "in recognition of traditional Indian practices." Report of the Joint Select Committee on Indian Land Claims 1 (1980). *See also* Transcript of March 28, 1980 Public Hearing before the Joint Select Committee on Indian Land Claims, 7 (statement of Sen. Collins: "there are some exceptions [to full state jurisdiction] which recognize historical Indian concerns").

Beano has played no part in the Penobscot Nation's historical culture or development. It is not uniquely Indian in character. It is not a traditional Indian practice and has no particular cultural importance for the Nation. Its only relationship to the Nation's "internal tribal matters" consists in the fact that the games' proceeds are used to finance admittedly legitimate tribal services and programs. This link is not strong enough to shield the games from the enforcement of 17 M.R.S.A. ch. 13-A on the Penobscot reservation.

The entry is:

Judgment affirmed.

All concurring.

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APPENDIX B

STATE OF MAINE

KENNEBEC, ss SUPERIOR COURT

CIVIL ACTION
Docket No. CV82-576

PENOBSCOT NATION,
PLAINTIFF AND DEFENDANT IN COUNTERCLAIM
v.
ARTHUR STILPHEN, COMMISSIONER OF THE DEPARTMENT OF PUBLIC SAFETY AND JAMES TIERNEY, ATTORNEY GENERAL,
DEFENDANTS AND PLAINTIFFS IN COUNTERCLAIM

OPINION AND ORDER

INTRODUCTION

Plaintiff Penobscot Nation seeks both a permanent injunction prohibiting the Defendants from prosecuting the Plaintiff for operating an unlicensed Beano game (17 M.R.S.A. § 311 *et seq.* (1983)), and a declaratory judgment providing that the state Beano laws do not apply to the Penobscot Nation. On December 7, 1982, the Court issued a Temporary Restraining Order enjoining the Defendants from enforcing the provisions of the Beano law against the Plaintiff until January 24, 1983. The Defendants have filed a counterclaim seeking a declaratory judgment that the Plaintiff's Beano game violates state law and an injunction prohibiting the Penobscot Nation from operating a Beano game. At the January 24 hearing on the permanent injunction, the Court extended its Temporary Restraining Order pending a final decision by the Court on the merits.

The material facts in this case are not in dispute.[1] Plaintiff operates a Beano game on Indian Island which provides an important source of internally-generated tribal revenue. Pursuant to an ordinance enacted by the Penobscot Reservation Tribal Council, the Nation's Beano Committee oversees the operation of the game, an admittedly well-run operation which is open to the general public. Although the Beano game is unlicensed and not in conformity with state statutes and regulations, there is not the slightest suggestion of impropriety or abuse in the conduct of Plaintiff's game. The Beano Committee, whose members serve at the pleasure of the Governor and Tribal Council, submits a monthly statement of income and expenses of the game to the Tribal Council. With the gross Beano revenue of about $50,000 per month, the Nation pays expenses generated by the game, operates neighborhood facilities, and finances governmental services such as snow and rubbish removal, health care, police protection, and court facilities.

ISSUES PRESENTED

The facts of this case present two important issues. The first is whether 17 M.R.S.A. § 312, which prohibits the operation of unlicensed Beano games, applies to municipalities, and therefore, to the Penobscot Nation.[2] The second is the impact of the Maine Act to Implement the Maine Indian Claims Settlement, 30 M.R.S.A. § 6201 *et seq.* (Supp. 1982), on the State's jurisdiction to regulate the Penobscot Nation's Beano game.

I. THE RIGHT OF MUNICIPALITIES TO CONDUCT BEANO GAMES

The Maine Criminal Code forbids gambling. 17-A M.R.S.A. § 951 et seq. Although the prohibition is general, in 17-A M.R.S.A. § 952(11), certain exceptions are statutorily created:

[1] The Court does not reach the issue raised by the Plaintiff relating to the burden of proof because the material facts in this case are not in dispute and have been proven beyond a reasonable doubt, in any event.

[2] The Maine Indian Claims Settlement Act of 1980, 25 U.S.C. § 1721 *et seq.*, and the accompanying state legislation, 30 M.R.S.A. § 6201 *et seq.* altered the previous legal status of Maine Indian tribes. For most purposes, Indian tribes are now analogous to municipalities. 30 M.R.S.A. § 6206(1).

> *Any person licensed by the Chief of the State Police as provided in Title 17 chapter 13-A* or chapter 14, or authorized to operate or conduct a raffle pursuant to Title 17, section 331, subsection 2, *shall be exempt from the application of the provisions of this chapter insofar as his conduct is within the scope of such license.*

17-A M.R.S.A. § 951 (emphasis added). The licensing provisions in 17 M.R.S.A. § 311 *et seq.* reiterate that Beano is unlawful in the State of Maine:

> No person, firm, association or corporation shall hold, conduct or operate the amusement commonly known as "Beano" or "Bingo" for the entertainment of the public within the State unless a license therefor is obtained from the Chief of the State Police.

17 M.R.S.A. § 312. The chapter specifically designates those groups whom the Chief of the State Police may license:

> The Chief of the State Police may issue licenses to operate "Beano" or "Bingo" games on a monthly basis to any volunteer fire department or any agricultural fair association or bona fide nonprofit ... organization ... when sponsored, operated and conducted for the exclusive benefit of such organization by duly authorized members thereof.

17 M.R.S.A. § 314. Operation of a Beano game without a license is punishable by a fine of up to $1000. 17 M.R.S.A. § 325.

The Plaintiff contends that 17 M.R.S.A. § 312, which prohibits any "person, firm, organization, or corporation" from operating a Beano game without a license, does not forbid a municipality to conduct Beano operations because a municipality is not a person, firm, organization or corporation. *Chase* v. *Inhabitants of Town of Litchfield*, 134 Me. 122, 125, 182 A. 921 (1936); *City of New Bedford* v. *New Bedford, Woods Hole S.S. Authority*, 329 Mass. 243, 107 N.E.2d 513 (1952). Since the Penobscot Nation enjoys all the rights,

powers, and privileges of a municipality, 30 M.R.S.A. § 6206(1), the Plaintiff argues that the Beano statutes do not apply to its game.

In ruling on the Plaintiff's statutory argument, the Court must look to the legislative intent behind the enactment of the statute. *Cummings* v. *Town of Oakland*, 430 A.2d 825 (Me. 1981); *Mundy* v. *Simmons*, 424 A.2d 135 (Me. 1980). The Legislature's purpose in enacting a statute is revealed by examining all of a statute's parts, not just its particular words and phrases, to reach a consistent construction. *In re Belgrade Shores, Inc.*, 359 A.2d 59 (Me. 1976); *Inman* v. *Willinski*, 144 Me. 116, 65 A.2d 1 (1949). This Court must review history of the statute in an effort to determine the cause for its enactment, the harms intended to be cured by its enforcement, and the results to be achieved by its operation. *Mundy* v. *Simmons*, *supra; First Auburn Trust Co.* v. *Buck*, 137 Me. 172, 16 A.2d 258 (1940).

LEGISLATIVE HISTORY

For eighty years between 1855 and 1935, legal gambling did not exist in Maine. Seitzinger, "Gambling," 28 ME.L.REV. 37, 38-44 (1976). In 1935 the State opened the door to state-sanctioned gambling by enacting a statute which permitted pari-mutuel betting. After 1935 the Legislature expressly authorized several other forms of legalized gambling, including licensed Beano games[3] conducted by non-profit organizations. *Id.* at 42.

The Beano law, originally enacted in 1943,[4] legalized the game for certain enumerated groups. Prior to enactment of the law, charitable organizations and agricultural fairs regularly conducted such games. Because these non-profit organizations relied on the revenue from the games as a major source of income, the legislation was devised to aid the groups by declar-

[3] Pub. Law 1943, ch. 355.

[4] *Id.*

ing the activity legal. 1943 Me. Leg. Rec., 860, 887. Although prior to the enactment there was some disagreement among county law enforcement officials about whether Beano was a permissible game of skill or an illegal game of chance (*Id.* at 788), most legislators agreed that the game was unlawful. They wanted to legalize and regulate the Beano games which were being sponsored by charitable organizations. *Id.* at 1078.

> [T]he sponsors of this bill appear to be interested in one thing, and that is to make legal what is going on right now in the State of Maine, that is, Beano games in charitable organizations.

Id. at 1165.

Lengthy and spirited debate accompanied the passage of the bill because many legislators feared the statutes would enable organized crime and out-of-state "racketeers" to conduct games. Id., at 790, 857, 1070, 1072, 1078, 1152. Because of this wide-spread concern, the original bill, which allowed anyone to obtain a license, was amended so that *only* a fair association or bona fide charitable, educational, fraternal, patriotic, religious, or veterans organization would be eligible to run a game:

> [I]t is a very effectual method of preventing racketeering because *no one but the bona fide organizations mentioned here can run a game of Beano in the state of Maine.*

Id. at 1078, (emphasis added). The limitation was clarified in the Senate debate by its Sponsor:

> MR. VARNEY OF YORK: Mr. President, I would like to ask a simple question. Is it intended by this amendment that nobody can have a license to play Beano except those organizations already mentioned?
>
> . . .
>
> MR. FRIEND: The reply, Mr. President, is yes.

1943 Me. Leg. Rec. 1153.

The legislative history reveals that the Beano law was in-

tended to prohibit *all* Beano games except those operated by certain enumerated non-profit organizations and agricultural fairs. Permitting municipalities to operate Beano games was not envisioned by the Legislature and was not within the clearly set out purpose of the legislation.

DISCUSSION

A careful reading of the statute as a whole reveals the intention of the Legislature that Beano remain prohibited except for carefully enumerated exceptions. Section 312 of Title 17 forbids any person, firm, organization or corporation from operating an unlicensed Beano game. Section 314 permits the Chief of the State Police to issue licenses only to:

> any volunteer fire department or any agricultural fair association or bona fide nonprofit charitable, educational, political, civic, recreational, fraternal, patriotic, religious or veteran's organization . . . .

Read together, these sections indicate that no one but the specified organizations may conduct Beano games. Other sections of Chapter 13-A regulate the time, place, and manner in which games can be operated, (17 M.R.S.A. §§ 317, 319, 320, 324) and enable the Chief of the State Police to adopt rules and regulations to control the game. 17 M.R.S.A. § 317. A careful reading of the legislation also reveals the Legislature's clear desire to strictly monitor Beano games. The operation of games by municipalities would circumvent the legislative decision to control tightly this form of gambling.[5]

[5] Plaintiff in its memorandum argues that: "In the current political climate, with tax revenues scarce, tax increases unpopular, and lotteries and other forms of "voluntary taxation" in vogue, it may well be that various Maine municipalties will urge the Legislature to leave well enough alone—and start their own games." Plaintiff's Supplemental Memorandum, p. 5. This may well be an issue that might appropriately be addressed by the Legislature. It is not the function of the judiciary to reflect the changing public will, but rather to interpret the law already promulgated by the Legislature. This Court will not usurp the perogative of the Legislature in this regard.

CONCLUSION

Based upon its review of the legislative history of the Beano statute and its reading of the statute as a whole, the Court finds that the Legislature intended to prohibit anyone, including municipalities, from conducting Beano games unless eligible and licensed under the statute. The statute, which applies to municipalities, does not grant them the right to be licensed. Therefore, the Penobscot Nation may not conduct Beano games in its recently acquired status as a municipality.

II. THE IMPACT OF THE MAINE INDIAN CLAIMS SETTLEMENT ON STATE LAW REGULATION

The Plaintiff's second argument is that even if municipalities are unable to conduct legal Beano games, the State cannot regulate the Penobscot Nation's game because the Maine Act to implement the Maine Indian Claims Settlement provides that:

> *internal tribal matters, including ... tribal government* ... shall not be subject to regulation by the State.

30 M.R.S.A. § 6206(1) (emphasis added). Since the Nation's Beano game generates a substantial amount of revenue used to finance tribal government operations, the Plaintiff contends the game is an internal tribal matter statutorily immune from State regulation. Plaintiff also argues that since the Tribal Council operates the game, Beano is excepted from State control under the "tribal government" provision of section 6206(1).

This is the first opportunity for judicial interpretation of the jurisdictional provisions set out in 30 M.R.S.A. § 6206(1). The allocation of federal, state and internal Indian control was among the most important considerations in fashioning the federal Maine Indian Claims Settlement Act, 25 U.S.C. § 1721 *et seq.*, and its accompanying state legislation, 30 M.R.S.A. § 6201, *et seq. See e.g.*, 1980 Me. Leg. Rec., Report of the Joint Committee on Indian Land Claims; Sen. Rep. No. 96-957, 96th Cong., 2nd Sess., 14. In fact, it was a misunderstanding about jurisdiction that permeates the history of the Indian Land Claims.

JUDICIAL AND LEGISLATIVE HISTORY

Until just a few years before the Settlement Acts were passed, the State of Maine and the federal government took the position that Maine tribes had no inherent sovereignty. The State passed laws governing such sensitive areas as the identity and culture of the Indian people. Statutes repealed by the Maine Implementing Act regulated membership in the tribe (22 M.R.S.A. § 4761); the right to reside on the reservation (4770); tribal elections (§ 4792); forms and structure of tribal government (§ 4793); and spending of trust funds (§ 4714). It was generally believed that the Nonintercourse Act, first enacted by the United States Congress in 1790, had no application to the Maine tribes, which were not federally recognized. This Act required that the United States approve transfer of Indian lands. Grants and sales of Maine Indian lands had never been federally sanctioned under this Act, presently existing as 25 U.S.C. § 177.

In 1975 the Indian land claims gained validity in the eyes of many when the United States District Court for the District of Maine held that the Indian Nonintercourse Act applies to *all* tribes and that the Act created a trust relationship between the tribes and the United States. *Joint Tribal Council of the Passamaquoddy Tribe* v. *Morton*, 388 F.Supp. 649 (D. Me. 1975), *aff'd*, 528 F.2d 370 (1st Cir. 1975). In the next few years, the status of Maine Indians was further redefined in *Bottomly* v. *Passamaquoddy Tribe*, 599 F.2d 1061 (1st Cir. 1979) (Maine tribes still possess the same inherent sovereignty as other tribes) and *State* v. *Dana*, 404 A.2d 551 (Me. 1979), *cert. denied*, 444 U.S. 1098 (1980) (federal jurisdiction exists over Indian crimes in some instances). *See* Sen. Rep. No. 96-957, 96th Cong., 2nd Sess., 11-14.

The rights of Maine Indians were thus judicially redefined and brought into line with those of Indians throughout the country. Under federal law, Indian tribes have broad powers to govern tribal matters. These powers arise from federal

statutes, treaties, and the tribe's inherent sovereignty. *United States* v. *Wheeler*, 435 U.S. 313 (1978); *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191 (1978). Congress however, has plenary control over Indian tribes and thus may divest a tribe of all or any attributes of sovereignty. *United States* v. *Wheeler*, at 319, 323.

This historical development took another jurisdictional turn when in 1980, Congress and the Maine Legislature enacted laws to settle the Indian land claims controversy. In exchange for $81,000,000 with which to purchase land, the Maine Indians abandoned their claim to approximately sixty percent of the land of the State of Maine and submitted to state jurisdiction. In enacting the Land Claims Settlement Act, Congress exercised its plenary power to redefine jurisdiction over the Maine tribes. The settlement provided that state law generally applies to Indians. 25 U.S.C. § 1725(b)(1). Neither general federal Indian law in force before the settlement, nor that created after the settlement, applies to Maine Indians if it preempts state jurisdiction. 25 U.S.C. § 1725(h) and 25 U.S.C. § 1725(b). For example, the Federal Indian Major Crimes Act does not apply in Maine. 25 U.S.C. § 1725(c).

The legislative history of the state and federal legislation codifying the settlement supports the conclusion that the State of Maine and the Congress did not give the Indians the kind of broad power which would support the Plaintiff's contention. During the debate in the Maine Legislature, opponents voiced their fears of creating a "nation within a nation" and of excluding Maine Indians from state jurisdiction. 1980 Me. Leg. Rec. 719. *See also*, March 23, 1980, Statement by Former Governor James B. Longley, 4-5. Proponents of the bill assured their colleagues that its passage would not create a divided sovereignty. 1980 Me. Leg. Rec. 718, 720, 726. As one State Representative said, the act "is consistent with this state's essential interest in state sovereignty and equal treatment under Maine law." *Id.* at 726. The report of the Joint Select

Committee on Indian Land Claims also substantiates this interpretation. In noting its findings and intentions for the record, the Committee said:

> It is the understanding and intent of the Committee that this bill establishes the basic principle of *full state jurisdiction over Indian* lands within the State, including Indian Territory or Reservations. *The bill provides specific exceptions to this principle in recognition of traditional Indian practices* and the federal relationship to Indians.

1980 Me. Leg. Rec., Report at 1, (emphasis added). The legislators wanted to allow Indian control over traditional pursuits such as fishing (codified in 30 M.R.S.A. § 6207) and organization, management, and definition of the tribe, (codified in 30 M.R.S.A. § 6206(1)). Further, Governor Brennan's counsel reported that the chief executive supported the legislation because *it did not compromise the State's sovereignty* over all its people in any substantial way. 1980 Me. Leg. Rec., Transcript of March 28, 1980, Public Hearing, 11-14.

Members of the Penobscot Nation also recognized that they were surrendering their sovereignty by agreeing to the settlement. At the public hearing on the bill, several Penobscots opposed passage because the legislation stripped them of their recently affirmed sovereignty. 1980 Me. Leg. Rec., Transcript of March 28, 1980, Public Hearing, 64-93. Penobscot Governor Timothy Love did not favor the settlement because he believed that in it the Nation had relinquished its sovereignty. Minutes, Penobscot Nation Tribal Council Meeting, March 9, 1980. Finally, counsel to the Penobscots made remarks at the public hearing which confirm that the Nation had participated in a *quid pro quo* and traded sovereignty for money and land. After recounting the then recent Indian judicial victories on the matter of jurisdiction,[8] he said:

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[8] *State* v. *Dana*, 404 A.2d 551 (1979), *cert. denied*, 444 U.S. 1098 (1980); *Bottomly* v. *Passamaquoddy Tribe*, 559 F.2d 1061 (1st Cir. 1979); *Joint Tribal Council of the Passamaquoddy Tribe* v. *Morton*, 388 F.Supp. 649 (D. Me. 1975), *aff'd* 528 F.2d 370 (1st Cir. 1975).

> [O]ne night ask why the Indians were willing to even discuss the question of jurisdiction with the State but simply the answer is that they were obliged to do so if they wanted to effectuate the Settlement of the monetary and land aspects of the claim which they had already worked out with the Carter Administration. . . .[T]he tribes opened negotiations with the State concerning the question of jurisdiction not because they wanted to do so but because they were obliged to do so to obtain a Settlement that they had already negotiated with the Federal Government . . . . Both sides began to attempt to understand and to the greatest extent possible, accommodate the needs of the other. For the State this meant, among other things, understanding the Tribes' legitimate interest in managing their internal affairs, in exercising tribal powers in certain areas of particular cultural importance such as hunting and fishing, and securing basic Federal protection against future alienation for the lands to be returned in the Settlement. *For the Indians it meant, among other things understanding the legitimate interest of the State in having basic laws ... apply uniformly throughout Maine.*

1980 Me. Leg. Rec., Transcript of March 28, 1980, Public Hearing, 23-25 (emphasis added). The federal legislative history likewise confirms that a basic premise of the settlement was that Maine Indians would be subject to general state law, except for limited areas acknowledging their unique cultural or historical existence. *See, e.g.*, Sen. Rep. No. 96-957, 96th Cong., 2nd Sess., 50.

DISCUSSION

Maine's implementing legislation reiterates the intent that Indians generally be subject to Maine law:

> Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by

> them, held in trust for them by the United States or by any other person or entity *shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State* to the same extent as any other person or lands or other natural resources therein.

30 M.R.S.A. § 6204 (emphasis added).[7] Although the Maine Indians surrendered their sovereignty except for areas enumerated in the Act, they still possess some powers of government. Generally, the Nation's powers are those of a municipality, except that:

> *internal tribal matters, including* membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, *tribal government*, tribal elections and the use or disposition of settlement fund income *shall not be subject to regulation by the state.*

30 M.R.S.A. § 6206(1). The Plaintiff contends that the "tribal government" exception to State regulation allows the Nation to hold high-stakes Beano games, the profits of which are used *to finance government activities*. This proposition is untenable because if the exception was so interpreted, it would virtually nullify State jurisdiction. Nearly any generally unlawful activity would be immune from State control under such an interpretation if all or part of the activity's proceeds supported government services.

Furthermore, the Plaintiff's suggested interpretation is not consistent with generally accepted principles of statutory construction. Where the general term "internal tribal matters" is followed by a list of specific items, the illustrations, though not exclusive, are construed to embrace only similar concepts. *Brunswick School Board* v. *Califano*, 449 F.Supp. 866, 870 (D. Me. 1978), *aff'd sub nom., Isleboro School Committee v. Califano*, 593 F.2d 424 (1st Cir. 1979), *cert. denied*, 444 U.S.

[7] When it devised the Implementing Act, the Maine Legislature provided:

> In the event that any portion of Title 30, section 6204, is held invalid, it is the intent of the Legislature that the entire Act is invalidated. P.L. 1979, c. 732, § 30.

972 (1979). Here the term "internal tribal matters" describes matters between the tribe and its members, including such areas as tribal organization, tribal form of government, and tribal membership, but certainly not embracing all activities, lawful or unlawful, which the tribe might conduct or from which it derives income. Gambling simply cannot be construed as an "internal tribal matter," regardless of how the profits are used or the fact that the Tribal Council controls the game. To accept Plaintiff's position would open the door to potential activities far beyond the intentions and expectations of not only the Legislatures involved but the Indian tribes themselves.

CONCLUSION

Based on its reading of the language and the legislative history of both the Maine Implementing Act and the Maine Indian Claims Settlement Act, the Court finds that Maine Indians are generally subject to state law. The exception to state control for "tribal government" matters, 30 M.R.S.A. § 6206(1), does not contemplate that Indians can engage in generally unlawful activities, including Beano, even though the game is run by the Tribal Council and all of the profits are used in government activities. Since, as a result of the settlement,[8] the Maine Indians' status now differs from that of other Indians in the United States, this Court's interpretation of what constitutes an "internal tribal matter" is not governed by cases involving other tribes or by Federal Indian Law, but must be derived from an examination of the relevant statutes and the legislative history. Having reviewed those materials in detail, the Court holds that conducting Beano games is not an internal tribal matter unique to the historical or cultural existence of the Indians which is free from state regulation. The

[8] Former Attorney General Richard Cohen described the Act as creating "by far the most favorable state-Indian jurisdictional relationship that exists anywhere in the United States." 1980 Me. Leg. Rec., Transcript of March 28, 1980, Public Hearing, 6.

Court further holds that the Nation is not free to conduct Beano games as a municipality.

It is therefore ORDERED and DECREED that:

> The provisions of the Beano statute, 17 M.R.S.A. § 311 *et seq.*, apply to the Plaintiff Penobscot Nation, and that the Penobscot Nation is thereby prohibited from operating the game commonly known as "Beano" or "Bingo."[9]

It is therefore further ORDERED and DECREED that:

The Plaintiff's request for a permanent injunction is DENIED.

The Defendants' request for a permanent injunction is DENIED.[10]

Dated: February 4, 1983

s/MORTON A. BRODY
MORTON A. BRODY
Justice, Superior Court

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[9] The Defendants-Counterclaimants prayed in their counterclaim for a declaratory judgment and injunctive relief relating to other alleged activities of the Plaintiff such as the operation of "lucky seven" games, slot machines and the like. These issues were not raised by either party in their oral arguments or in their memoranda and have not been treated by the Court in this decision.

[10] Defendant's request for injunctive relief is not an appropriate remedy in light of the Court's decision that the activity for which relief is being sought is already prohibited by State law.

APPENDIX C

STATE OF MAINE

SUPREME JUDICIAL COURT

LAW DOCKET NO. KEN-83-42

PENOBSCOT NATION
Plaintiff/Appellant
v.
ARTHUR STILPHEN, Commissioner, Department of Public Safety of the State of Maine, and
JAMES TIERNEY, Attorney General
Defendants/Appellees

NOTICE OF APPEAL

Plaintiff-Appellant Penobscot Nation hereby files notice pursuant to United States Supreme Court Rule 10 of its appeal to the United States Supreme Court from the judgment of this Court entered June 7, 1983, affirming the decision of the Superior Court for Kennebec County denying the Penobscot Nation's request for permanent injunctive and declaratory relief. The appeal is taken pursuant to 28 U.S.C. § 1257(2).

Respectfully submitted,

THOMAS N. TUREEN
TUREEN & MARGOLIN
178 Middle Street
Portland, Maine 04101
(207)773-7166

Dated: June 20, 1983
Filed:

[STAMP] June 20,1983

APPENDIX D

PUBLIC LAW 96-420,
94 STAT. 1785, 25 U.S.C.A. § 1721 *et seq.*

AN ACT

TO PROVIDE FOR THE SETTLEMENT OF LAND CLAIMS OF INDIANS, INDIAN NATIONS AND TRIBES AND BANDS OF INDIANS IN THE STATE OF MAINE, INCLUDING THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, AND THE HOULTON BAND OF MALISEET INDIANS, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2 (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this Act by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this Act by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens, and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole will result if the aforementioned claims are not resolved promptly.

(7) This Act represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe the Penobscot Nation, the Houlton Band of Maliseet Indians their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe, and the Penobscot Nation, and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(a) "Houlton Band of Maliseet Indians" means the sole successor to the Maliseet Tribe of Indians as constituted

in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Houlton Band of Maliseet Indians is represented, as of the date of the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(c) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under section 5(c) of this Act;

(d) "laws of the State" means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof;

(e) "Maine Implementing Act means section 1, section 30, and section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter 732 of the public laws of 1979;

(f) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act;

(g) "Passamaquoddy Indian Territory" means those lands as defined in the Maine Implementing Act;

(h) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe is represented, as of the date of the enactment of this Act, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations;

(i) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act;

(j) "Penobscot Indian Territory" means those lands as defined in the Maine Implementing Act;

(k) "Penobscot Nation" means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of the date of enactment of this Act, by the Penobscot Nation Governor and Council;

(l) "Secretary" means the Secretary of the Interior;

(m) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under section 5(a) of this Act; and

(n) "transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF INDIAN TITLE AND CLAIMS OF THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, THE HOULTON BAND OF MALISEET INDIANS, AND ANY OTHER INDIANS, INDIAN NATION, OR TRIBE OR BAND OF INDIANS WITHIN THE STATE OF MAINE

SEC. 4. (a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, in-

cluding but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: *Provided however*, That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation, or tribe or band of Indians any claim under the laws of the State of Maine arising before the date of this Act and arising from any transfer of land or natural resources by any Indian, Indian nation, or tribe or band of Indians, located anywhere within the State of Maine, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, on the grounds that such transfer was not made in accordance with the laws of the State of Maine.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State.

(b) To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian na-

tion, or tribe or band of Indians had aboriginal title, such subsection (a)(1) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

(d) The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of section 5 of this Act. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

ESTABLISHMENT OF FUNDS

SEC. 5. (a) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which $27,000,000 shall be deposited following the appropriation of sums authorized by section 14 of this Act.

(b)(1) One-half of the principal of the settlement fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the settlement fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the settlement fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy

Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: Provided, That the Secretary may not agree to terms which provide for investment of the settlement fund in a manner not in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037), unless the respective tribe or nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: *Provided, further,* That such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the settlement fund as to which there is no agreement.

(2) Under no circumstances shall any part of the principal of the settlement fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either tribe or nation: *Provided, further,* That nothing herein shall prevent the Secretary from investing the principal of said fund in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in subsection 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the settlement fund allocated to the respective tribe or nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the settlement fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the tribe or nation, the United States shall have no further trust responsibility to the tribe or nation or their members with respect to the sums paid, any subsequent

distribution of these sums, or any property or services purchased therewith.

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which $54,500,000 shall be deposited following the appropriation of sums authorized by section 14 of this Act.

(d) The principal of the land acquisition fund shall be apportioned as follows:

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians:

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe and;

(3) $26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized and directed to expend, at the request of the affected tribe, nation or band, the principal and any income accruing to the respective portions of the land acquisition fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective tribe or nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area by purchase, gift, or exchange by such tribe or nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective tribe or nation, and the United States shall have no further trust reponsibility with respect

thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the band: *Provided*, That no land or natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseet Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition: Provided further, That the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

(4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by section 5(d)(3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this Act and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation;

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this Act and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the band, except that the band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act;

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the band.

(D) provisions on the location of these lands.

Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application of the laws of the State of Maine. Within one year of the date of enactment of this Act, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the status of these negotiations.

(e) Notwithstanding the provisions of section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land

or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

(f) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective tribe, nation, or band have executed appropriate documents relinquishing all claims to the extent provided by sections 4, 11, and 12 of this Act and by section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g)(1) The provisions of section 2116 of the Revised Statutes shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2), such land or natural resources shall not otherwise

be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective tribe, nation, or band, be—

(A) leased in accordance with the Act of August 9, 1955 (69 Stat. 539), as amended;

(B) leased in accordance with the Act of May 11, 1938 (52 Stat. 347), as amended;

(C) sold in accordance with section 7 of the Act of June 25, 1910 (36 Stat. 857), as amended;

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (62 Stat. 17);

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the affected tribe, nation, or band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the tribe, nation, or band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

(h) Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2206), or other existing law.

(i)(1) Trust or restricted land or natural resources within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the Maine Implementing Act and upon notification to the Secretary of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservtion may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the land acquisition fund established by section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the

respective tribe or nation shall designate, with the approval of the United States, and within thirty days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective tribe or nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

(3) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies the United States is authorized to seek judicial review of all relevant matters in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

(j) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i)(2) of this section.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as provided in section 8(e) and section 5(d)(4), all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b)(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and State funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and State funding in other States.

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of sections 1152, 1153, 1154, 1155, 1156, 1160, 1161, and 1165 of title 18 of the United States Code. This provision shall not be effective until sixty days after the publication of notice in the Federal Register as required by subsection 4(d) of this Act.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the

same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and section 1362 of title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: *Provided however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the settlement fund established pursuant to section 5(a) of this Act and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the ageement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

(i) As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria

generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective tribe, nation, or band subject to a restriction against alienation or which are held in trust for the benefit of the respective tribe, nation, or band shall be considered Federal Indian reservations for purposes of Federal taxation.

TRIBAL ORGANIZATION

SEC. 7. (a) The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians may each organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the tribe, nation, or band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) For purposes of benefits under this Act and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of the date of this Act, are enrolled members on the band's existing membership roll, and direct lineal descendants of such members. Membership in the band shall be subject to such further qualifications as may be provided by the band in its organic governing document or amendments thereto subject to the approval of the Secretary.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by sections 108(a)-(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with sections 108 (b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are "reservations" within section 4(10) of the Act.

(e) For the purposes of this section, the Houlton Band of Maliseet Indians is an "Indian tribe" within section 4(8) of the Act, provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in subsection 6(e)(2) of this Act.

(f) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that tribe or nation.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 9. (a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton

Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefit of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

(c) The availability of funds or distribution of funds pursuant to section 5 of this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be eligible or entitled.

DEFERRAL OF CAPITAL GAINS

SEC. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the land acquisition fund whether in the name of the United States or of the respective tribe, nation or band shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the settlement fund allocated to that tribe or nation. The receipt of said State funds by the Secretary, shall constitute a full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and represenatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

SEC. 12. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation, or tribe or band of Indians or the United States as trustee therefor, including those actions now pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966-ND and 1969-ND).

LIMITATION OF ACTIONS

SEC. 13. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

AUTHORIZATION

SEC. 14. There is hereby authorized to be appropriated $81,500,000 for the fiscal year beginning October 1, 1980, for transfer to the funds established by section 5 of this Act.

INSEPARABILITY

SEC. 15. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

CONSTRUCTION

SEC. 16. (a) In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this Act should emerge, the provisions of this Act shall govern.

(b) The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

Approved October 10, 1980.

PUBLIC LAWS OF MAINE 1979
Chapter 732, Sections 1, 30 and 31

AN ACT to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 30 MRSA Pt. 4 is enacted to read:

PART 4

INDIAN TERRITORIES

CHAPTER 601

MAINE INDIAN CLAIMS SETTLEMENT

§ 6201. Short title

This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement."

§ 6202. Legislative findings and declarations of policy.

The Legislature finds and declares the following.

The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are asserting claims for possession of large areas of land in the State and for damages alleging that the lands in question originally were transferred in violation of the Indian Trade and Intercourse Act of 1790, 1 Stat. 137, or subsequent reenactments or versions thereof.

Substantial economic and social hardship could be created for large numbers of landowners, citizens and communities in

the State, and therefore to the State as a whole, if these claims are not resolved promptly.

The claims also have produced disagreement between the Indian claimaints and the State over the extent of the state's jurisdiction in the claimed areas. This disagreement has resulted in litigation and, if the claims are not resolved, further litigation on jurisdictional issues would be likely.

The Indian claimants and the State, acting through the Attorney General, have reached certain agreements which represent a good faith effort on the part of all parties to achieve a fair and just resolution of those claims which, in the absence of agreement, would be pursued through the courts for many years to ultimate detriment of the State and all its citizens, including the Indians.

The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State.

It is the purpose of this Act to implement in part the foregoing agreement.

§ 6203. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.

1. Commission. "Commission" means the Maine Indian Tribal-State Commission created by section 6212.

2. Houlton Band of Maliseet Indians. "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as con-

stituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.

3. Land or other natural resources. "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.

4. Laws of the State. "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.

5. Passamaquoddy Indian Reservation. "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian Reservation. For purposes of this subsection, the lands reserved to the Passamaquoddy Tribe by the aforesaid agreement shall be limited to Indian Township in Washington County; Pine Island, sometimes referred to as Taylor's Island, located in Big Lake, in Washington County; 100 acres of land located on Nemcass Point, sometimes referred to as Governor's Point, located in Washington County and shown on a survey of John Gardner which is filed in the Maine State Archives, Executive Council Records, Report Number 264 and dated June 5, 1855; 190

acres of land located at Pleasant Point in Washington County as described in a deed to Captain John Frost from Theodore Lincoln, Attorney for Benjamin Lincoln, Thomas Russell, and John Lowell dated July 14, 1792, and recorded in the Washington County Registry of Deeds on April 27, 1801, at Book 3, Page 73; and those 15 islands in the St. Croix River in existence on September 19, 1794 and located between the head of the tide of that river and the falls below the forks of that river, both of which points are shown on a 1794 plan of Samuel Titcomb which is filed in the Maine State Archives in Maine Land Office Plan Book Number 1, page 33.

6. Passamaquoddy Indian territory. "Passamaquoddy Indian territory" means that territory defined by Section 6205, subsection 1.

7. Passamaquoddy Tribe. "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations.

8. Penobscot Indian Reservation. "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in said river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land shall be included within the Penobscot Indian Reservation.

9. Penobscot Indian territory. "Penobscot Indian territory" means that territory defined by section 6205, subsection 2.

10. Penobscot Nation. "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Penobscot Reservations Tribal Council.

11. Secretary. "Secretary" means the Secretary of the Interior of the United States.

12. Settlement Fund. "Settlement Fund" means the trust fund established for the Passamaquoddy Tribe and Penobscot Nation by the United States pursuant to congressional legislation extinguishing aboriginal land claims in Maine.

13. Transfer. "Transfer" includes, but is not necessarily limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.

§ 6204. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

§ 6205. Indian territory

1. Passamaquoddy Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Passamaquoddy Indian territory:"

A. The Passamaquoddy Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 1, 1983, are not held in common with any other person or entity and are certified by the secretary by January 1, 1983, as held for the benefit of the Passamaquoddy Tribe:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.3, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle.

2. Penobscot Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Penobscot Indian territory:"

A. The Penobscot Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the

following areas or lands to the extent that those lands are acquired by the secretary prior to January 1, 1983, are not held in common with any other person or entity and are certified by the secretary by January 1, 1983 as held for the Penobscot Nation:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle.

3. Takings under the laws of the State.

A. Prior to any taking of land for public uses within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity proposing the taking, or, in the event of a taking proposed by a public utility, the Public Utilities Commission, shall be required to find that there is no reasonably feasible alternative to the proposed taking. In making this finding, the

public entity or the Public Utilities Commission shall compare the cost, technical feasibility, and environmental and social impact of the available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking. Prior to making this finding, the public entity or Public Utilities Commission, after notice to the affected tribe or nation, shall conduct a public hearing in the manner provided by the Maine Administrative Procedure Act, on the affected Indian reservation. The finding of the public entity or Public Utilities Commission may be appealed to the Maine Superior Court.

In the event of a taking of land for public uses within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity or public utility making the taking shall, at the election of the affected tribe or nation, and with respect to individually allotted lands, at the election of the affected allottee or allottees, acquire by purchase or otherwise for the respective tribe, nations, allottee or allottees a parcel or parcels of land equal in value to that taken; contiguous to the affected Indian reservation; and as nearly adjacent to the parcel taken as practicable. The land so acquired shall, upon written certification to the Secretary of State by the public entity or public utility acquiring such land describing the location and boundaries thereof, be included within the Indian Reservation of the affected tribe or nation without further approval of the State. For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation. The acquisition of land for the Passamaquoddy Tribe or the Penobscot Nation or any allottee under this subsection shall be full compensation for any such taking. If the affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the moneys received for such taking shall be reinvested in accordance with the provisions of paragraph B.

B. If land within the Passamaquoddy Indian Territory or the Penobscot Indian Territory but not within either the Passamaqouddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State the money received for said land shall be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys are so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall be included within the respective Indian territory without further approval of the State. To the extent that any moneys received are so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall designate, within 30 days of such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall be included within the respective Indian territory. No land acquired pursuant to this paragraph shall be included within either Indian Territory until the Secretary of the Interior has certified, in writing, to the Secretary of State the location and boundaries of the land acquired.

4. Taking under the laws of the United States. In the event of a taking of land within the Passamaquoddy Indian Territory for public uses in accordance with the laws of the United States and the reinvestment of the moneys received from such taking within 2 years of the date on which the moneys are received, the status of the lands acquired by such reinvestment shall be determined in accordance with subsection 3, paragraph B.

5. Limitations. No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other

than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.

§ 6206. Powers and duties of the Indian tribes within their respective Indian territories

1. General Powers. Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer

those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.

2. Power to sue and be sued. The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.

3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.

§ 6207. Regulation of fish and wildlife resources

1. Adoption of ordinances by tribe. Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation shall each have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

A. Hunting, trapping or other taking of wildlife; and

B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

2. Registration stations. The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the

State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.

3. Adoption of regulations by the commission. Subject to the limitations of subsection 6, the commission shall have exclusive authority to promulgate fishing rules or regulations on:

A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;

B. Any section of a river or stream both sides of which are within Indian territory; and

C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.

In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.

Said rules or regulations shall be equally applicable on a non-discriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and Penobscot Nation. In adopting

rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.

4. Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

5. Posting. Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

6. Supervision by Commissioner of Inland Fisheries and Wildlife. The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affec-

ting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulations by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultations with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measures be more restrictive than those which the commission could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commission may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.

7. Transportation of game. Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation, may be transported within the State.

8. Fish and wildlife on non-Indian lands. The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.

9. Fish. As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an enlongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.

§ 6208. Taxation

1. Settlement Fund income. The Settlement Fund and any portion of such funds or income therefrom distributed to the Passamaquoddy Tribe or the Penobscot Nation or the members thereof shall be exempt from taxation under the laws of the State.

2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for

governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.

3. Other taxes. The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.

§ 6209. Jurisdiction over criminal offenses, juvenile crimes, civil disputes and domestic relations

1. Exclusive jurisdiction in tribes over certain matters. Except as provided in subsections 3 and 4, the Passamaquoddy Tribe and the Penobscot Nation shall have the right to exercise exclusive jurisdiction separate and distinct from the State over:

A. Criminal offenses against a person or property for which the maximum potential term of imprisonment does not exceed 6 months and the maximum potential fine does not exceed $500 and which are committed on the Indian reservation of the respective tribe or nation by a

member of either tribe or nation against another member of either tribe or nation or against the property of another member of either tribe or nation;

B. Juvenile crimes against a person or property involving conduct which, if committed by an adult, would fall, under paragraph A, within the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation, and juvenile crimes as defined in Title 15, section 3103, subsection 1, paragraphs B to D committed by a juvenile member of either tribe or nation on the Indian reservation of the respective tribe or nation;

C. Civil actions between members of either tribe or nation arising on the Indian reservation of the respective tribe or nation and which are cognizable as small claims under the laws of the State and civil actions against a member of either tribe or nation under Title 22, section 2383 involving conduct on the Indian reservation of the respective tribe or nation by a member of either tribe or nation;

D. Indian child custody proceeding to the extent authorized by applicable federal law; and

E. Other domestic relations matters including marriage, divorce and support between members of either tribe or nation both of whom reside on the Indian reservation of the respective tribe or nation.

The decision to exercise or terminate the exercise of the jurisdiction authorized by this subsection shall be made by the tribal governing body. Should either tribe or nation choose not to exercise, or choose to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State shall have exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes shall apply within the Passamaquoddy and Penobscot Indian reservations and the State shall have exclusive jurisdiction over these offenses and crimes.

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the respective tribe or nation shall be deemed to be enforcing tribal law, provided, however, the definitions of the criminal offenses and the juvenile crimes, and the punishments applicable thereto, over which the respective tribe or nation has exclusive jurisdiction under this section, shall be governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purpose of this section shall be governed by any and all federal statutes, including but without limitation the provisions of the United States Code, Title 25, sections 1301-03 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State wherein a criminal offense under the exclusive jurisdiction of either tribe or nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of such lesser included offense. A lesser included offense shall be defined under the laws of the State.

4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under this section shall not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction shall not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which either tribe or nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum shall not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court.

The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court shall not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.

5. Future Indian communities. Any 25 or more adult members of either the Passamaquoddy Tribe or the Penobscot Nation residing within their respective Indian territory and in reasonable proximity to each other may petition the commission for designation as an "extended reservation." If the commission determines, after investigation, that the petitioning tribal members constitute an "extended reservation", the commission shall establish the boundaries of this "extended reservation" and shall recommend to the Legislature that, subject to the approval of the governing body of the tribe or nation involved, it amend this Act to extend the jurisdiction of the respective tribe or nation to the "extended reservation." The boundaries of any "extended reservation" shall not exceed those reasonably necessary to encompass the petitioning tribal members.

§ 6210. Law enforcement on Indian reservations and within Indian territory

1. Exclusive authority of tribal law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall have exlusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relation laws over which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209, subsection 1.

2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation shall have the authority within their respective Indian territories and state and county

law enforcement officers shall have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce, all laws of the State other than those over which the respective tribe or nation has exclusive jurisdiction under section 6209, subsection 1.

3. Agreements for cooperation and mutual aid. Nothing herein shall prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agent from entering into agreements for cooperation and mutual aid.

4. Powers and training requirements. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall possess the same powers and shall be subject to the same duties, limitations and training requirements as municipal police officers under the laws of the State.

§ 6211. Eligibility of Indian tribes and state funding

1. Eligibility generally. The Passamaquoddy Tribe and the Penobscot Nation shall be eligible for participation and entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities as a matter of right. Such entitlement shall be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through any source of revenue available to the respective tribe or nation, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of moneys employs a factor for the municipal real property tax rate, and in the absence of such tax within either Indian territory, the formula

applicable to such Indian territory shall be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of moneys employs a factor representing municipal valuation, the valuation applicable to such Indian territory shall be determined by the State Tax Assessor in the manner generally provided by the laws of the State, provided, however, that property owned by or held in trust for either tribe or nation and used for governmental purposes shall be treated for purposes of valuation as like property owned by a municipality.

2. Limitation on eligibility. In computing the extent to which either the Passamaquoddy Tribe or the Penobscot Nation is entitled to receive state funds under subsection 1, any moneys received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, shall be deducted in computing any payment to be made to the respective tribe or nation by the State.

3. Eligibility for discretionary funds. The Passamaquoddy Tribe and the Penobscot Nation shall be eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligiblity requirements, including availability of funds, applicable to municipalities in the State.

4. Eligibility of individuals for state funds. Residents of either Indian territory shall be eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State, provided, however, that in computing the extent to which any person is entitled to receive any such funds, any moneys received by such person from the United States within substantially the same period of

time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State.

§ 6212. Maine Indian Tribal-State Commission

1. Commission created. There is hereby established a Maine Indian Tribal-State Commission. The commission shall consist of 9 members, 4 to be appointed by the Governor of the State subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 each to be appointed by the Passamaquoddy Tribe and the Penobscot Nation and a chairman to be selected in accordance with subsection 2. The members of the commission, other than the chairman shall each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of any member, the appointing authority may fill the vacancy for the unexpired term.

2. Chairman. The commission, by a majority vote of its 8 members, shall select a person to act as chairman from the Retired Judges of the Superior or Supreme Judicial Court, the Retired Judges of the United States District Court for the District of Maine, or from those Retired Judges of the United States Court of Appeals for the First Circuit or the United States Supreme Court who are residents of the State. In the event that 8 members of the commission by majority vote are unable to select a chairman within 120 days of the first meeting of the commission, the Governor shall appoint one of such retired judges to be interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section. In the event of the death, resignation or disability of the chairman, the commission may select, by a majority vote of its 8 remaining members, a chairman from such retired judges. In the event that the commission is unable to select a chairman within 120 days of such

death, resignation or disability, the Governor shall appoint one of such retired judges to be interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section. The chairman shall be a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.

3. Responsibilities. In addition to the responsibilities set forth elsewhere in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Passamaquoddy Tribe and the Penobscot Nation as it deems appropriate.

Seven members shall constitute a quorum of the commission and no decision or action of the commission shall be valid unless 5 members vote in favor of such an action or decision.

4. Personnel, fees, expenses of commissioners. The commission shall have authority to employ such personnel as it deems necessary and desirable in order to effectively discharge its duties and responsibilities. Such employees shall not be subject to state personnel laws or rules.

The commission members shall be paid $75 per day for their services and shall be reimbursed for reasonable expenses including travel.

5. Interagency cooperation. In order to facilitate the work of the commission, all other agencies of the State are directed to cooperate with the commission and shall make available to it without charge information and data relevant to the responsibilities of the commission.

§ 6213. Approval of prior transfers

1. Approval of tribal transfers. Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of any Indian nation, or tribe or band of In-

dians including but without limitation any transfer pursuant to any treaty, compact or statute of any state, which transfer occurred prior to the effective date of this Act, shall be deemed to have been made in accordance with the laws of the State.

2. Approval of certain individual transfers. Any transfer of land or other natural resources located anywhere within the State, from, by or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, shall be deemed to have been made in accordance with the laws of the State.

§ 6214. Tribal school committees

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the law of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.

Sec. 30. Inseparability. In the event that any portion of Title 30, section 6204, is held invalid, it is the intent of the Legislature that the entire Act is invalidated. In the event that either Title 30, section 6209, subsections 3 or 4, is held invalid, it is the intent of the Legislature that all of Title 30, section 6209 is invalidated. In the event that any other section or provision of this Act, including Title 30, section 6209, is held invalid, it is the intent of the Legislature that the remaining sections of the Act shall continue in full force and effect.

Sec. 31. Effective date. This Act shall be effective only upon the enactment of legislation by the United States extinguishing aboriginal land claims and derivative claims of Indians in Maine and discharging all claims in pending litigation brought by the United States against the State on behalf of the Passamaquoddy Tribe and the Penobscot Nation, providing funds for the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians for such extinguishment, and ratifying and approving this Act without modifications, provided, however, that in no event shall this Act become effective until 90 days after adjournment of the Legislature, as required by the Constitution of Maine, Article IV, Part 3, Section 16.

MAINE REVISED STATUTES ANNOTATED
CHAPTER 13-A

§ 311. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Beano. "Beano" shall mean a specific kind of group game of chance, regardless of whether such a game is characterized by another name. Wherever the term "beano" is used, the word "bingo" or any other word used to characterize such a game may be interchanged. In "beano," each participant is given or sold one or more tally cards, so-called, each of which contains numbers or letters and may or may not be arranged in vertical or horizontal rows. The participant covers the numbers or letters as objects similarly numbered or lettered are drawn from a receptacle, and the game is won by the person who first covers a previously designated arrangement of numbers or letters on the tally card.

2. Equipment. "Equipment" shall mean the receptacle and numbered objects to be drawn from it; the master board upon which such objects are placed as drawn; the tally cards or sheets bearing such numbers to be covered and the objects used to cover them; the boards or signs, however operated, used to display the numbers as they are drawn; public address systems; and any other articles essential to the operation, conduct and playing of "Beano."

3. License. "License" shall mean that written authority from the Chief of the State Police to hold, conduct or operate the amusement commonly known as "Beano" for the entertainment of the public within the State of Maine. A location permit must accompany the license to be valid.

4. Licensee. "Licensee" shall mean any organization which has been granted a license by the Chief of the State Police to hold, conduct or operate "Beano" or "Bingo."

5. Location permit. "Location permit" shall mean that card issued by the Chief of the State Police, describing the premises or area in which "Beano" may be conducted. Such location permit must be accompanied by a license. Only such locations expressly described in the location permit shall be used for the conduct of any game.

6. Organization. "Organization" shall mean any firm, association or corporation authorized to conduct "Beano" in accordance with this chapter.

7. Period. "Period" shall mean the number of calendar weeks authorized by a single license for the operation of "Beano" or "Bingo."

§ 312. License required

No person, firm, association or corporation shall hold, conduct or operate the amusement commonly known as "Beano" or "Bingo" for the entertainment of the public within the State unless a license therefor is obtained from the Chief of the State Police. This chapter shall not be construed to apply to any other amusement or game.

"Beano" or "Bingo" shall not be conducted on Sunday, Memorial Day, Christmas or any other national holiday with religious significance, except that "Beano" or "Bingo" may be played on Sunday after the hour of 2 p.m. on the premises of and in conjunction with agricultural fair associations. No "Beano" or "Bingo" games shall be conducted between the hours of 12 midnight and 7 a.m. The prevailing time for the State of Maine shall be used to determine these hours.

§ 313. Application

Any organization desiring to conduct such an amusement shall apply to the Chief of the State Police for a license pursuant to the provisions set forth in this section. The application shall be on forms provided by the Chief of the State Police, shall be signed by a duly authorized officer of the organization to be licensed, shall contain the full name and address of the

organization and the location where it is desired to conduct the amusement and shall bear the consent of the municipal officers of the town or city in which it is proposed to operate such amusement.

§ 313-A. Exemption for elderly

Clubs, groups or organizations, comprised only of members who are at least 62 years of age, which operate "beano" or "bingo" games for their own entertainment and recreation and not for profit, are exempt from application and licensing provisions of this chapter.

§ 314. Issuance of license; fees

The Chief of the State Police may issue licenses to operate "Beano" or "Bingo" games on a monthly basis to any volunteer fire department or any agricultural fair association or bona fide nonprofit charitable, educational, political, civic, recreational, fraternal, patriotic, religious or veteran's organization which was in existence at least 2 years prior to its application for a license, when sponsored, operated and conducted for the exclusive benefit of such organization by duly authorized members thereof. Said 2 years' limitation shall not apply to any chartered posts of veterans organizations, nationally established, even though such posts have not been in existence for 2 years prior to their application for a license nor shall the 2 years' limitation apply to any volunteer fire department or rescue unit; and provided that a license may be issued to an agricultural fair association when sponsored, operated and conducted for the benefit of such agricultural fair association.

The fee for such a license to any nonprofit organization is $3 for each calendar week, or portion thereof, that the amusement is to be operated, or the license may be issued for a calendar month for a fee of $12.50. All license fees shall be paid to the Treasurer of State to be credited to the General Fund. No licenses may be assignable or transferable. Nothing contained in this section is to be construed to prohibit any volunteer fire

department or any agricultural fair association or bona fide non-profit charitable, educational, political, civic, recreational, fraternal, patriotic, religious or veterans' organization from obtaining licenses for a period not to exceed 6 months on one application. No more than one license may be issued to any organization for any one period.

All fees required by this chapter shall accompany the application for a license. Fees submitted as license fees shall be refunded if the license is not issued. Fees shall not be refunded for unused licenses or for any license which is suspended or revoked as provided by this chapter.

§ 315. Seasonal licenses

Notwithstanding section 314, the Chief of the State Police may issue seasonal licenses to operate "Beano" or "Bingo" games in bona fide resort hotels, provided they are operated and conducted therein by the management without profit and solely for the entertainment of guests of the hotel registered therein, and provided that charges, if any, to the guests for participation in such entertainment shall be limited to a maximum of $2 in any 24-hour period. The fee for such license shall be $10 and shall be paid to the Treasurer of State to be credited to the General Fund. Hotel and liquor licenses of any such resort hotel licensees shall not be withheld because of the conducting of such resort hotel of the game of "Beano" or "Bingo."

§ 316. Evidence

The Chief of the State Police may require such evidence as he may deem necessary to satisfy him that an applicant organization conforms to the restrictions and other provisions of this chapter. Charters, organizational papers, bylaws or other such written orders of founding which outline or otherwise explain the purpose for which organizations were founded shall, upon request, be forwarded to the Chief of the State Police.

§ 317. Rules and Regulations

The Chief of the State Police shall have the power to make and adopt rules and regulations, not inconsistent with law, which he may deem necessary for the administration and enforcement of this chapter and for the licensing, conduct and operation of the amusement commonly known as "Beano" or "Bingo." He shall have the power and authority to regulate, supervise and exercise general control over the operation of such amusement including, but not limited to, the payment of prizes and the use of equipment. He shall have the power and authority to investigate as to the direct or indirect ownership or control of any licenses and to revoke or suspend any license for just cause after hearing. In establishing such rules and regulations, he shall, in addition to the standards set forth in other provisions of this chapter, be guided by the following standards setting forth conduct, conditions and activity deemed undesirable:

1. **Fraud.** The practice of any fraud or deception upon a participant in a game of "Beano" or "Bingo;"

2. **Unsafe premises.** The conduct of "Beano" in, at or upon premises which may be unsafe due to fire hazard or other such conditions;

3. **Advertising; solicitation and enticement.** Advertising which is obscene, solicitation on a public way of persons to participate in "Beano," charging admission or awarding prizes for attendance.

§ 318. Expense of administration

The necessary expenses of administering this chapter shall be paid out of the fees received under this chapter.

§ 319. Persons under 16

Persons under the age of 16 years shall not be permitted to take part in the conduct of, nor participate in, the game of "Beano" or "Bingo," nor shall such minor be admitted to the playing area unless accompanied by parent, guardian or other responsible person.

No "Beano" or "Bingo" games licensed under this chapter shall be conducted unless some person at least 18 years of age, who has been a member in good standing of the licensee for at least 2 years, exercises exclusive control of each game played.

No license for the conduct of "Beano" or "Bingo" shall be issued to any firm, association, corporation or group composed wholly or primarily of minors.

§ 320. Conduct

Licensed "Beano" or "Bingo" shall not be conducted at any location where alcoholic beverages are sold, dispensed or consumed during the period of one hour before the conduct of said games. The licensee shall not permit any disorderly persons to enter or remain within the room or area where "Beano" or "Bingo" games are being conducted.

§ 321. Effect of other laws

All acts and parts of acts inconsistent herewith shall be inoperative as to this chapter, and the share of the State stipend for aid and encouragement to agricultural societies shall not be withheld from any such society because of the conducting on the fair grounds of the game of "Beano" or "Bingo."

§ 322. Reports

The Chief of the State Police shall require from any organization licensed to operate "Beano" or "Bingo" whatever reports he deems necessary for the purpose of the administration and enforcement of this chapter.

§ 323. Access to premises

Any organization making application to the Chief of the State Police to conduct or operate "Beano" or "Bingo," or any organization licensed under this chapter to operate "Beano" or "Bingo", shall permit inspection of any equipment, prizes, records or items and materials used or to be used in the conduct or operation of "Beano" or "Bingo" by the Chief of the State Police or his authorized representative.

The licensee shall permit at any and all times any inspector from the State Fire Marshal's office, or the city or town fire in-

spectors of the municipality in which "Beano" is being conducted, to enter and inspect the licensed premises.

§ 324. Games of chance prohibited at "Beano" locations

No "Beano" game shall be conducted at any location where any lottery or other game of chance is conducted, nor shall any lottery or other game of chance be conducted during the period of one hour before the conduct of any "Beano" game at the specific location of said "Beano" game, except that the following lotteries may be conducted during the period of one hour before the conduct of "Beano" games:

1. Maine State Lottery. Lottery tickets issued by the Maine State Lottery Commission may be sold when a valid license certificate issued by said commission is properly displayed;

2. Raffles. Raffle tickets may be sold in accordance with chapter 14;

3. Lucky seven. Lucky seven or similar sealed tickets may be sold when said game of chance is licensed by the Chief of the State Police and when a valid license certificate is properly displayed.

For purposes of this section, "location" shall mean that location specified in the location permit.

§ 325. Penalties

Any person, firm, association or corporation holding or conducting or aiding or abetting in the holding or conducting of such amusement within the State without a license therefor duly issued by the Chief of the State Police, or any person, firm, association or corporation who violates any of the provisions of this chapter or any of the rules or regulations of the Chief of the State Police prescribed by authority of said chapter, shall be punished by a fine of not more than $1,000.

APPENDIX "E"

[STAMP—RECEIVED AUG 26 1983]

[SEAL] UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR - 3 1983

Honorable David A. Stockman
Director, Office of Management and Budget
Attention: Assistant Director
for Legislative Reference
Washington, D.C. 20503

Dear Mr. Stockman:

This responds to your request for our views on the Department of Justice draft bill on criminal reform.

We strongly object to the proposed new section 1166 of title 18, United States Code.

Section 1166 would subject Indian individuals, Indian organizations, and tribal governments to State laws with regard to the licensing, the regulation, or the prohibition of gambling on Indian reservations.

Such a proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983, which states that tribal governments *should have the primary responsibility for meeting the needs and desires of their clients* and that it is important *that tribes reduce their dependence on Federal funds by providing greater percentage of the cost of their self-government.* It is the intent of this Administration to enhance the government-to-government relationship between the Federal government and the Indian tribes.

A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purposes enunciated in the President's Message. Given the often limited resources which tribes have for revenue-producing activities, we believe that revenue-producing possibilities should be protected and enhanced.

As a result of these new revenue raising activities of various Indian tribes the Bureau of Indian Affairs is establishing an Ad Hoc Task Force on bingo and related gambling activities undertaken by the tribes. It may be possible to provide further information on this subject after the Ad Hoc Committee has had a chance to meet and issue a report of its findings as to the nature and extent of Indian gambling activity, provisions of laws of the various States in which such gambling is carried on, the degree of importance of the activity to the tribes in their attempts to meet the needs of their people and reduce their dependence upon the Federal Government, and any need for Federal legislation or regulation under existing law. Premature actions would hinder our efforts to strengthen tribal government.

We believe that it would be inappropriate for this Administration to propose any derogation of the government-to-government policy formulated by the President. We therefore strongly recommend that the new section 1166 of title 18, U.S. Code, not be included in the draft bill.

Further, we recommend that section 1114 of title 18, U.S. Code be amended to delete the archaic reference "the Indian field service of the United States," and insert the modern reference "the Bureau of Indian Affairs or Indian Health Service,".

Sincerely,

(s) JOHN W. FRITZ
JOHN W. FRITZ
Deputy Assistant Secretary

No. 83-366

In the Supreme Court of the United States

OCTOBER TERM, 1983

PENOBSCOT NATION,
APPELLANT,

v.

ARTHUR STILPHEN, COMMISSIONER,
DEPARTMENT OF PUBLIC SAFETY OF THE
STATE OF MAINE,

AND

JAMES E. TIERNEY, ATTORNEY GENERAL,

APPELLEES.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE

MOTION TO DISMISS

JAMES E. TIERNEY
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Counsel for Appellees

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ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE

MOTION TO DISMISS

The Appellees, Arthur Stilphen, Commissioner, Department of Public Safety, State of Maine, and James E. Tierney, Attorney General, State of Maine, respectfully move the Court to dismiss the appeal herein on the grounds that the appeal is not within this Court's jurisdiction; that the appeal does not present a substantial federal question; and, that the federal question sought to be reviewed was not timely or properly raised.

STATEMENT OF THE CASE

The Penobscot Nation filed a complaint in Kennebec County Superior Court, State of Maine, on December 6, 1982, seeking a declaration that it was exempt from state regulation because (1) Indian tribes were not covered by Maine anti-gambling laws, and (2) the operation of a beano game was an "internal tribal matter" under the Maine Indian Claims Settlement Act, P.L. 1979, c. 732, 30 M.R.S.A. § 6206(1). When the Kennebec County Superior Court ruled against the Penobscot Nation on both issues, an appeal was taken to the Maine Supreme Judicial Court.

The Maine Supreme Judicial Court upheld the decision of the Kennebec County Superior Court. The Maine Supreme Judicial Court held that Maine's anti-gambling statutes were applicable to the Penobscot Nation and that the operation by the Penobscot Nation of a beano game was not exempt as an "internal tribal matter" from regulation by the State under the terms of the Maine Indian Claims Settlement Acts, 94 Stat. 1785, 25 U.S.C. § 1721 *et seq.*, and P.L. 1979, c. 732, 30 M.R.S.A. § 6201 *et seq.*

JURISDICTION

The Penobscot Nation (Nation) seeks to appeal the judgment entered on June 7, 1983, by the Supreme Judicial Court of Maine. Nation invokes the jurisdiction of this Court under the provisions of 28 U.S.C. § 1257(2) by claiming that, as applied, Section 6206(1) of the Maine Implementing Act violates the laws of the United States. *See Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 (1921). Specifically, Nation claims that the Maine Court's interpretation of the phrase "internal tribal matters" infringes on tribal sovereignty.

At no time in the course of this case prior to this appeal has Nation drawn into question the validity of 30 M.R.S.A. § 6206(1) nor suggested that 30 M.R.S.A. § 6206(1) was

preempted by federal Indian case law. This untimely assertion of a federal question alone deprives this Court of jurisdiction. *Raley v. Ohio*, 360 U.S. 423, 434-435 (1959).

In the complaint and its subsequent arguments, Nation only urged the Maine Courts to interpret 30 M.R.S.A. § 6206(1) in accordance with federal Indian case law. The Court below refused to do so on the firm grounds that (1) Congress had "approved, ratified, and confirmed" the Maine Implementing Act, P.L. 1979, c. 732, 30 M.R.S.A. § 6201 *et seq.*, as the mandate for determining the jurisdictional relationship between the State and Maine Indians, 94 Stat. 1785, 25 U.S.C. § 1725(b) (1); and, (2) Congress had expressly stated that general "laws[1] and regulations of the United States" applicable to Indians would not apply in the State of Maine if such laws would affect or preempt the State's "civil, criminal or regulatory jurisdiction", 94 Stat. 1785, 25 U.S.C. §§ 1725(h) and 1735(b). Accordingly, the Maine Supreme Judicial Court found

> [i]t would make no sense, in an integrated legislative package, to define the state's jurisdiction with reference to federal case law, while at the same time declaring that the self-same case law has no impact upon the jurisdiction of the State of Maine.

Penobscot Nation v. Stilphen, 461 A.2d 478, 488 (Me. 1983).

The Court below determined the meaning of the phrase "internal tribal matters" by looking to the Maine statute and to the statute's legislative history. *Id.* at 489. The Maine Court's construction of this Maine statute is not subject to review and revision by this Court. *Quong Ham Wah Co. v. Industrial Comm.*, 255 U.S. 445, 448 (1921).

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[1] The term "laws" includes case law. 25 U.S.C. § 1722(d); 30 M.R.S.A. § 6203(4).

QUESTION PRESENTED

May the State of Maine prohibit gambling by the Penobscot Nation consistent with the Maine Indian Claims Settlement Acts, 94 Stat. 1785, 25 U.S.C. § 1721 *et seq.*, and P.L. 1979, c. 732, 30 M.R.S.A. § 6201, *et seq.*?

ARGUMENT

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED.

A. THE DECISION OF THE MAINE SUPREME JUDICIAL COURT IS NOT IN CONFLICT WITH OTHER COURT DECISIONS ON THE REGULATION OF INDIAN GAMBLING.

The Maine Supreme Judicial Court decided, as a matter of statutory construction, that Nation's beano game is not an "internal tribal matter" and thus not shielded from the operation of Maine's anti-gambling statutes. This decision is not in conflict with the cases,[2] cited by Nation, which arose in Pub. L. 280 states, 67 Stat. 588, 18 U.S.C. § 1161, 28 U.S.C. § 1360. These cases were governed by *Bryan v. Itasca County*, 426 U.S. 373, 384 (1976), which held that Pub. L. 280 did not confer "general state civil regulatory control over Indian reservations." The situation in Maine is different. Maine is not a Pub. L. 280 state and Congress has expressly conferred upon the State general civil, criminal and regulatory jurisdiction over Maine Indians. 25 U.S.C. §

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[2] *Barona Group of Capitan Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, _____U.S._____, 103 S.Ct. 2091 (1983); *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982); *Oneida Tribe of Indians v. State of Wisconsin*, 518 F.Supp. 712 (W.D. Wis. 1981).

1725(b) (1);[3] 30 M.R.S.A. §§ 6204 and 6206(1); *Cf. Id.* at 389.

B. THE DECISION OF THE MAINE SUPREME JUDICIAL COURT IS NOT IN CONFLICT WITH OTHER COURT DECISIONS ON THE APPLICABILITY OF STATE LAWS TO INDIANS.

As pointed out above, Congress has expressly and unambiguously declared that federal Indian case law does not apply in Maine. 25 U.S.C. §§ 1725(h) and 1735(b). This case, then, is not guided by the presumption in favor of Indians, *Bryan v. Itasca County, supra* at 392, and does not present an occasion for analysis whether state regulation of Indian activities interferes with "reservation self-government" or impairs "a right granted or reserved by federal law." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973); *McClanahan v. Arizona State Tax Comm.*, 411 U.S. 164, 170-172 (1973); *Rice v. Rehner*, ____U.S.____, 103 S.Ct. 3291, 3294-3295 (1983). Nevertheless, the decision of the Court below is consistent with federal case law on the applicability of State laws to Indians in the face of a claim of preemption. *See Rice v. Rehner*, 103 S.Ct. at 3296-3298.

The Court below found, and Nation does not dispute, that gambling "has played no part in the Penobscot Nation's historical culture or development." *Penobscot Nation v. Stilphen*, 461 A.2d at 490. There is thus "no tradition of sover-

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[3] "The phrase 'civil, criminal, or regulatory jurisdiction' as used in this section [25 U.S.C. § 1725(h)] is intended to be broadly construed to encompass the statutes and regulations of the State of Maine as well of the jurisdiction of the courts of the State. The word 'jurisdiction' is not to be narrowly interpreted as it has in cases construing the breadth of Public Law 83-280 [Public Law 280] such as *Bryan v. Itasca County*, 426 U.S. 373 (1976)." S. REP. NO. 957, 96th Cong., 2nd Sess. 30-31 (1980)

eign immunity in this respect" and little, if any, weight need be accorded "any asserted interest in tribal sovereignty in this case." *See Rice v. Rehner*, 103 S.Ct. at 3298. It is against this "backdrop" and the absence of express congressional pre-emption that Nation's claim of pre-emption must be examined and rejected. *Id.* 103 S.Ct. at 3295, 3298-3299. The State has a substantial interest in regulating gambling, the evil effects of which "spillover" and reach "the whole community". *Penobscot Nation v. Stilphen*, 461 A.2d at 487. *Cf. New Mexico v. Mescalero Apache Tribe*, _____U.S._____, 103 S.Ct. 2378, 2387 (1983). Maine simply does not infringe on tribal self-government merely because the regulation of gambling by the Nation will deprive the Nation of revenues it is currently receiving.[4] *Cf. Washington v. Confederated Tribes*, 447 U.S. 134, 156 (1980). In the area of gambling, Nation cannot point to any "congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development." *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980); *Cf. Rice v. Rehner*, 103 S.Ct. at 3298.

C. THE QUESTION PRESENTED IS NOT OF GENERAL IMPORTANCE.

Regardless of the outcome of this case, only the State of Maine and Maine Indians will be affected. The Maine Indian Claims Settlement Acts, 94 Stat. 1785, 25 U.S.C. § 1721, *et seq.*, and P.L. 1979, c. 732, 30 M.R.S.A. § 6201, *et seq.*, apply only to the State of Maine and Maine Indians. Contrary to the assertions of the Penobscot Nation, this

[4] "The tribe's interest in beano. . . is purely financial. And in point of fact, the Penobscots would have nothing to 'sell' if highstakes beano were not prohibited throughout the rest of Maine." *Penobscot Nation v. Stilphen*, 461 A.2d at 486.

case does not involve the "defiance of federal Indian Law", but merely the interpretation of a Maine statute. Indeed, federal Indian law is expressly made inapplicable to the State of Maine. 25 U.S.C. §§ 1725(h) and 1735(b). Equally false is the Nation's claim that the Settlement Acts touched only land, water and fishing rights. The principle purpose of the Settlement Acts was to lay to rest the jurisdictional dispute between the State and Maine Indians. 25 U.S.C. § 1721(b)(3). "Relations between the Penobscot Nation, the State of Maine, and the federal government are now controlled..." by the Settlement Act. *Penobscot Nation v. Stilphen*, 461 A.2d at 482.

II. THE DECISION BELOW RESTS ON AN ADEQUATE NON-FEDERAL BASIS.

The Court below held that (1) under federal Indian law, and (2) under the Maine Implementing Act, 30 M.R.S.A. § 6206(1), the Nation was not immune from the application of Maine's anti-gambling statutes. *Penobscot Nation v. Stilphen*, 461 A.2d at 482. The Nation has focused its attack in this appeal on the federal Indian law holding. The decision of the Maine court, however, was correct without regard to this issue. Thus, this Court need not reach the alleged federal-state conflict the Nation seeks to have resolved.

The question presented to the Court below was whether the Nation's gambling operations were immune from State regulation as an "internal tribal matter". *Penobscot Nation v. Stilphen*, 461 A.2d at 488. In answering this question in the negative, it was only necessary for the Maine Court to interpret the Maine Implementing Act, 30 M.R.S.A. § 6206(1). The Maine Court, as a matter of state law, and as a matter of statutory interpretation, construed the phrase "internal tribal matters" to include only matters unique to the cultural and historical existence of the Nation. *Id*, at 490. This construction of the State statute is an adequate non-federal basis for the decision of the Maine Court and does

not present an appropriate occasion for review by the U.S. Supreme Court.

CONCLUSION

Wherefore, Arthur Stilphen and James E. Tierney, respectfully submit that this Court lacks jurisdiction to hear this appeal and that the question presented is so unsubstantial as not to need further argument and respectfully request the Court dismiss this appeal.

Respectfully submitted,

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Counsel for Appellees

Dated: October 5, 1983

No. 83-366

In the Supreme Court of the United States

OCTOBER TERM, 1983

PENOBSCOT NATION,
APPELLANT,

v.

ARTHUR STILPHEN, COMMISSIONER,
DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF MAINE,
AND
JAMES E. TIERNEY, ATTORNEY GENERAL,
APPELLEES.

On Appeal from the Supreme Judicial Court
Of Maine

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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TABLE OF CITATIONS

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BRIEF IN OPPOSITION TO MOTION TO DISMISS

This brief is submitted pursuant to Rule 16.5 of the Rules of the Supreme Court, in opposition to the Appellees' Motion to Dismiss which was filed on October 6, 1983.

Appellees' Motion to Dismiss, at pp. 2-3, argues that this Court lacks jurisdiction over the appeal because the Penobscot Nation never raised below a claim that:

> as applied, Section 6206(1) of the Implementing Act [30 M.R.S.A. §6206(1)] violates the laws of the United States.

It is true that the Penobscot Nation raised no such claim below, but flatly wrong that this claim is raised in this Appeal.

This action involves a challenge to enforcement of the state beano laws, not the Maine Implementing Act. Appellees totally miss the issue on Appeal clearly set out in the Jurisdictional Statement. The Penobscot Nation argued below and maintains on this Appeal that the Maine beano statute, 17 M.R.S.A. §§311 *et seq.*, "could not lawfully be applied to the Penobscot Nation's beano game" because of pre-emption by federal law. Jurisdictional Statement at 3-4. That issue was properly raised from the beginning of the action, it was addressed by the courts below, and it is squarely within the appellate jurisdiction of this Court.

Appellants' basic argument, presented in a number of different forms, is that this case turns only on a question of state law. Therefore, they conclude, this Court lacks jurisdiction to review the judgment below. Motion to Dismiss at 3; this case has no relevance to the decisions by other courts on Indian bingo, Motion to Dismiss at 4; it has no impact on other states, Motion to Dismiss at 6-7; and it rests on an adequate non-federal basis, Motion to Dismiss at 7.

As the federal bingo decisions hold, however, state bingo laws can only be applied to tribal bingo operations with the consent of Congress. Jurisdictional Statement at 4-5. Maine's jurisdiction over the beano operated by the Penobscot tribe to finance its governmental operations can only be upheld if that is what Congress intends, and that is solely a question of *federal* law. The Maine Implementing Act, 30 M.R.S.A. §6201 *et seq.*, gave Maine new jurisdiction over the Penobscot Nation only to the extent intended by Congress when it enacted the federal legislation. That intent can only be found by construing the applicable federal statutes in accordance with the governing federal case law. Jurisdictional Statement at 9-12.

In fact, the Appellees themselves rely upon the Maine Indian Claims Settlement Act, Pub.L. 96-420, 25 U.S.C. §1721 *et seq.*, for the state's right to regulate the Penobscot beano. Motion to Dismiss at 3, 5. Yet at the same time

Appellees contend that this federal statute can be construed and the status of the Penobscot Nation determined entirely without reference to federal law, on the premise that "federal Indian case law does not apply in Maine." Motion to Dismiss, at pp. 3, 5.

This same refusal to apply federal law was the fundamental error of the state courts below. Congress had no intention of rendering federal Indian law inapplicable to the Penobscot Nation by enactment of the Settlement legislation. Indeed, the Congressional Committee Reports on the Settlement Act cite the decisions in *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978), and *United States* v. *Wheeler*, 435 U.S. 313 (1978), to explain the effect of the legislation on the sovereign status of the Maine tribes. Sen. Rep. No. 96-957, 96th Cong., 2nd Sess., pp. 29-30. No federal legislation affecting a federally recognized tribe could properly be understood by ignoring the applicable case law on which Congress relies in this field.

The appellees, like the courts below, suggest in essence that Congress terminated the federal status of the Penobscot Nation. Congress plainly intended the contrary: it defined the Nation as a federally recognized tribe, 25 U.S.C.A. §1725(i), authorized the organization of its tribal government, 25 U.S.C.A. §1726(a), and incorporated the provision of the State Implementing Act that "tribal government. . .shall not be subject to regulation by the State". Sen. Rep. No. 96-957, 96th Cong., 2d Sess., p. 29. 30 M.R.S.A. §6206(1).

The application of these provisions puts this case in the same posture as similar cases involving other tribes. The question of pre-emption must be answered by a particularized inquiry weighing the tribal government interests against the state government interests to determine whether application of the state law would constitute an unlawful attempt to regulate tribal government and infringe on tribal sovereignty. Jurisdictional Statement at 5-9. The courts below failed to undertake this particulaized inquiry, or to construe the applicable statutes, in accordance with the decisions of this Court.

Appellees' Motion somehow turns both the Penobscot claim that federal law pre-empts the state beano statute, and the state's defense that the federal Settlement Act authorized its enforcement, into questions of state law. This stubborn refusal to accept the supremacy of federal law in this area should not be permitted to prevail. This Appeal raises important issues of federal Indian law which cannot be separated from the continuing nationwide controversy over Indian bingo operations. The issue requires resolution by this Court.

Respectfully submitted,

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